OFFICE COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962 1963

No. 686 39

NEW YORK TIMES COMPANY, PETITIONER,

vs.

L. B. SULLIVAN.

No. 687 40

RALPH D. ABERNATHY, ET AL., PETITIONERS,

vs.

L. B. SULLIVAN.

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

PETITIONS FOR CERTIORARI FILED NOVEMBER 21, 1962

CERTIORARI GRANTED JANUARY 7, 1963

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962 1963

No. ~~606~~ 39

NEW YORK TIMES COMPANY, PETITIONER,

vs.

L. B. SULLIVAN.

No. ~~609~~ 40

RALPH D. ABERNATHY, ET AL., PETITIONERS,

vs.

L. B. SULLIVAN.

ON WRITS OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

INDEX

VOLUME 1

	Original	Print
Record from the Circuit Court of Montgomery County, Alabama		
Organization of Court	1	1
Summons and complaint	2	1
Exhibit A — Advertisement entitled, "Heed Their Rising Voices" published in The New York Times issue of March 29, 1960, page 25	6	6
Demurrer of S. S. Seay, Sr.	12	15

RECORD PRESS, PRINTERS, NEW YORK, N. Y., MAY, 1963

	Original	Print
Record from the Circuit Court of Montgomery County, Alabama—Continued		
Demurrer of Fred L. Shuttlesworth	14	17
Demurrer of Ralph D. Abernathy	16	20
Demurrer of J. E. Lowery	18	22
Interrogatories to defendant, The New York Times Company	20	24
Motion to produce	24	29
Affidavit of M. R. Nachman, Jr.	27	34
Ruling of Court on plaintiff's motion to produce, filed May 31, 1960	29	35
Exception to Court's ruling on plaintiff's motion to produce	30	37
Motion for extension of time	31	37
Order of Court extending time for production of documents	32	38
Motion to quash service of process	33	39
Certificate of service	38	46
Amendment to motion to quash service of process	39	47
Order and opinion, Walter B. Jones, on motion to quash	40	49
Defendant, The New York Times Company's exception to the order denying its amended motion to quash	47	58
Demurrer of defendant, The New York Times Company	48	58
Objections to interrogatories	51	63
Motion for default judgment	52a	65
Order of the Court on the question of objections to interrogatories and the motion for continuance	53	66
Additional demurrers of defendant, The New York Times Company	54	67
Amended demurrers of defendant, Ralph D. Abernathy	60	74
Amended demurrers of defendant, J. E. Lowery	65	80
Amended demurrers of defendant, S. S. Seay, Sr.	69	86
Amended demurrers of defendant, Fred L. Shuttlesworth	74	93

	Original	Print
Record from the Circuit Court of Montgomery County, Alabama—Continued		
Pleas of the defendant, The New York Times Company, One through Six, inclusive	79	99
Demurrer of plaintiff, L. B. Sullivan	83	105
Judgment of the Court on pleadings	86	108
Motion of Ralph D. Abernathy to exclude plaintiff's evidence	87	109
Motion of Fred L. Shuttlesworth to exclude plaintiff's evidence	87	111
Motion of S. S. Seay, Sr. to exclude plaintiff's evidence	88	112
Motion of J. E. Lowery to exclude plaintiff's evidence	89	113
Motion of J. E. Lowery for special findings	90	114
Motion of Ralph D. Abernathy for special findings	91	116
Motion of S. S. Seay, Sr. for special findings	91	117
Motion of Fred L. Shuttlesworth for special findings	92	118
Stipulation with reference to the transcript of the records, etc.	94	119
Transcript of proceedings on December 16, 1960 re filing amendments to motion to quash, adding further grounds of objection to questions propounded, etc.	97	122
Transcript of proceedings on motion to quash, July 25, 26 and 27, 1960	105	130
Appearances	105	130
Motion to file an amendment to motion to quash, Court's ruling and exception thereto	105a	131
Witnesses for the defendant:	107	135
Testimony of Harold Faber—		
direct	107	135
cross	122	149
redirect	293	303
recross	311	320
redirect	321	330

	Original	Print
Record from the Circuit Court of Montgomery County, Alabama—Continued		
Transcript of proceedings on motion to quash, July 25, 26 and 27, 1960—Continued		
Testimony of Joseph B. Wagner—		
direct	321	330
cross	349	356
New York Times Company assignment of additional grounds of objections	350	357
Testimony of Joseph B. Wagner—		
cross	352	359
redirect	382	387
recross	385	391
Roger J. Waters—		
direct	393	398
cross	403	408
New York Times Company assignment of additional grounds of objections	412	416
Testimony of Roger J. Waters—		
cross	414	418
redirect	429	432
recross	431	435
John McCabe—		
direct	434	437
New York Times Company assignment of additional grounds of objections	460	462
Testimony of John McCabe—		
cross	462	464
Defendant rests	484	486
VOLUME 2		
Witnesses for the plaintiff:	484	487
Testimony of Grover C. Hall, Jr.—		
direct	484	487
cross	487	489
New York Times Company assignment of additional grounds of objections	489	491
Colloquy re introduction of evidence	489b	493

	Original	Print
Record from the Circuit Court of Montgomery County, Alabama—Continued		
Transcript of proceedings on motion to quash, July 25, 26 and 27, 1960—Continued		
Reading into the record the depositions of Claude F. Sitton and Thomas M. Hurley, taken June 3, 1960	495	499
New York Times Company assignment of additional grounds of objections	549	552
Testimony of Paul D. Fuller—		
direct	554	558
cross	562	566
Court reporter's certificate and clerks' certificates (omitted in printing)	563a	567
Transcript of proceedings on merits, November 1, 2 and 3, 1960	1683	567
Appearances	1683	567
Colloquy between court and counsel	1684	568
Court's questions to qualify the jury	1685	569
Examination of jury panel on voir dire	1686	570
Colloquy re and introduction of exhibits	1697	579
Witnesses for the plaintiff:	1722	602
Testimony of Grover C. Hall, Jr.—		
direct	1722	602
cross	1725	606
redirect	1732	612
Arnold D. Blackwell—		
direct	1733	613
cross	1738	618
redirect	1746	626
recross	1747	627
William H. MacDonald—		
direct	1748	628
Harry W. Kaminsky—		
direct	1754	634
cross	1757	636
H. M. Price, Sr.—		
direct	1765	644
cross	1766	646

	Original	Print
Record from the Circuit Court of Montgomery County, Alabama—Continued		
Transcript of proceedings on merits, November 1, 2 and 3, 1960—Continued		
Testimony of William M. Parker, Jr.—		
direct	1769	649
cross	1772	651
Colloquy re introduction of evidence	1773	652
Testimony of Horace W. White—		
direct	1784	662
cross	1787	665
redirect	1791	669
recross	1791	669
John R. Matthews—		
direct	1797	674
cross	1804	681
redirect	1806	683
E. Y. Lacy—		
direct	1806	683
cross	1810	687
O. M. Strickland—		
direct	1812	689
cross	1817	693
Frank R. Stewart—		
direct	1818	694
cross	1824	700
L. B. Sullivan—		
direct	1826	703
cross	1838	714
L. P. Patterson—		
direct	1850	726
Plaintiff rests	1852	727
Motion of defendants to exclude the plaintiff's case as applies to the four defendants and denial thereof	1852	728
Motion of defendant, The New York Times to exclude and in the alternative to present a motion for a directed verdict and overruling thereof	1853	728

	Original	Print
Record from the Circuit Court of Montgomery County, Alabama—Continued		
Transcript of proceedings on merits, November 1, 2 and 3, 1960—Continued		
Witnesses for the defendants:	1854	730
Testimony of Gershon T. Aronson—		
direct	1854	730
cross	1862	737
D. Vincent Redding—		
direct	1881	755
cross	1888	762
redirect	1897	771
recross	1897	771
redirect	1898	771
Harding Bancroft—		
direct	1898	772
cross	1904	777
redirect	1913	786
Solomon S. Seay, Sr.—		
direct	1914	787
cross	1917	790
redirect	1918	791
Ralph David Abernathy—		
direct	1919	792
cross	1921	794
redirect	1923	796
recross	1923	796
Fred L. Shuttlesworth—		
direct	1924	796
cross	1926	798
J. E. Lowery—		
direct	1928	800
cross	1930	803
John Murray—		
direct	1931	804
cross	1938	810
Defendants rest	1943	816
Court's overruling of Motions of defendants, Abernathy, Shuttlesworth, Seay & Lowery to exclude all of plaintiff's evidence	1944	816

	Original	Print
Record from the Circuit Court of Montgomery County, Alabama—Continued		
Transcript of proceedings on merits, November 1, 2 and 3, 1960—Continued		
Oral charge and exceptions thereto	1947	819
Given charges requested:		
By the defendant, The New York Times	1957a	829
By the defendant, Ralph D. Abernathy	1957g	837
By the defendant, J. E. Lowery	1957h	838
By the defendant, S. S. Seay, Sr.	1957i	839
By the defendant, Fred L. Shuttlesworth	1957j	840
Refused written charges requested:		
By the defendant, The New York Times	1957k	841
By the defendant, Ralph D. Abernathy	1957p	847
By the defendant, J. E. Lowery	1957s	851
By the defendant, S. S. Seay, Sr.	1957v	854
By the defendant, Fred L. Shuttlesworth	1957y	858
Final judgment, jury and verdict	1958	862
Reporter's certificate (omitted in printing)	1958a	863
Transcript of proceedings on defendant's The New York Times Company motion for a new trial, March 3, 1961	1959	863
Appearances	1959	863
Stipulation regarding record and approval thereof	1960a	864
Colloquy between court and counsel on motion for new trial	1961	866
Proposed exhibits offered in evidence	1966	871
Reporter's certificate (omitted in printing)	2006a	896
Motion of defendant's The New York Times Company for new trial	2011	896
Exhibit I—The Montgomery Advertiser issue of April 7, 1960, article "Will They Purge Themselves?"	2051	949
Exhibit II—The Alabama Journal issue of November 1, 1960, article "Jurors Selected For Times Suit" By Judith Rushin, Journal Staff Writer	2052	951

	Original	Print
Record from the Circuit Court of Montgomery County, Alabama—Continued		
Motion of defendant's The New York Times Company for new trial—Continued		
Exhibit III—The Alabama Journal issue of November 2, 1960, article "L. B. Sullivan Testifies In Times Suit" By Judith Rushin, Journal Staff Writer	2053	955
Exhibit IV—The Montgomery Advertiser issue of November 3, 1960, article "Writer of Ad Takes Stand In Libel Trial" By Arthur Osgoode	2055	960
Exhibit V—The Alabama Journal issue of November 3, 1960, article "Opposing Sides Give Final Arguments In Times Libel Suit" By Judith Rushin	2056	964
Continuance of motion	2057	967
Certificate of service (omitted in printing)	2057	967
Order of Court continuing motion for new trial, December 16, 1960	2057a	967
Order of Court continuing motion for new trial, January 14, 1961	2057a	968
Order of Court continuing motion for new trial, February 10, 1961	2057b	968
Amendment to defendant's The New York Times Company, motion for new trial	2057c	969
Order of Court taking motion for new trial under consideration	2057d	969
Order of Court denying motion of defendant, New York Times Company for new trial	2057d	970
Motion of defendant, Ralph D. Abernathy for new trial	2058	970
Continuance of motion	2068	984
Certificate of service (omitted in printing)	2068	984
Order continuing motion for new trial, December 16, 1960, Ralph D. Abernathy	2069	984
Motion of defendant, J. E. Lowery for new trial	2070	985
Continuance of motion	2080	998
Certificate of service (omitted in printing)	2080	998

VOLUME 3

	Original	Print
Record from the Circuit Court of Montgomery County, Alabama—Continued		
Order continuing motion for new trial, December 16, 1960, J. E. Lowery	2081	999
Motion of defendant, S. S. Seay, Sr. for new trial	2082	999
Continuance of motion	2092	1013
Certificate of service (omitted in printing)	2092	1013
Order continuing motion for new trial, December 16, 1960, S. S. Seay, Sr.	2093	1013
Motion of defendant, Fred L. Shuttlesworth for new trial	2094	1014
Continuance of motion	2103	1027
Certificate of service (omitted in printing)	2104	1027
Order continuing motion for new trial, December 16, 1960	2105	1028
Supersedeas bond filed by The New York Times Company	2106	1028
Notice of writ of error	2107	1030
Notice of joining in appeal	2108	1031
Notice to unite in appeal	2109	1032
Certificate of appeal	2110	1033
Motion for extension of time in which to file transcript in Circuit Court	2110a	1034
Order on motion for extension of time	2110b	1035
Stipulation as to changes, etc. in record	2110c	1036
Clerk's certificates (omitted in printing)	2111	1036
Proceedings in the Supreme Court of the State of Alabama	2113	1037
Assignments of error of The New York Times Company	2113	1037
Assignments of error of Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr., and J. E. Lowery	2165	1100
Clerk's certificate (omitted in printing)	2188a	1132
Certificate of appeal	2189	1133
Motion of appellee to strike assignments of error	2190	1134
Motion of individual appellants to dismiss motion to strike	2193	1137
Minute entry of argument and submission	2195	1139

	Original	Print
Opinion, Harwood, J.	2196	1189
Judgment	2254	1180
Motion for stay of execution	2255	1181
Stay of execution	2256	1183
Bond	2258	1184
Clerk's certificate (omitted in printing)	2259	1193
Orders allowing certiorari	2260	1193
Plaintiff's Exhibits:	564	1195
1—One envelope, Don McKee, Montgomery Advertiser, Montgomery, Alabama, dated April 1960 and contents of envelope relating to payment to stringers	564	1195
2—One envelope, John Chadwick, Room 505—Massey Building, South Magazine, Birmingham, Alabama, dated April, 1960 and contents of envelope relating to payment to stringers	566	1197
3—Rules for Correspondents, The New York Times, National News Desk, signed Harold Faber	568	1199
4 & 5—Two envelopes for John Chadwick, Birmingham, Alabama, dated January 1960 and March 1960 relating to payment to stringers	570	1201
6 & 7—Two envelopes for Don McKee, Montgomery, Alabama, dated March 1960 and February 1960 and contents of envelope relating to payment to stringers	572	1203
8–12—Five envelopes for Don McKee, dated February 1959, March 1959, July 1959, November 1959 and December 1959 and contents relating to payment to stringers	576	1207
13–40—Twenty-eight envelopes for John Chadwick dated October 1959, September 1959, August 1959, July 1959, June 1959, April 1959, January 1959, November 1958, October 1958, August 1958, July 1958, May 1958, March 1958, January 1958, December 1957, September 1957, August 1957, August 1957, June 1957, May 1957, March 1957, February 1957, January 1957, December 1956, November 1956, September 1956, August 1956 and June 1956 and contents relating to payment to stringers	583	1214

	Original	Print
Plaintiff's Exhibits—Continued		
41—Clerk's note re—	622	1253
42–45—Four envelopes for John Chadwick dated May 1956, April 1956, February 1956 and January 1956 with contents relating to payment to stringers	623	1253
46–52—Seven envelopes for Maurice Castle Jr., Mobile Press Register, Mobile, Alabama, dated October 1958, January 1959, May 1958, January 1958, January 1957, May 1956, January 1956 with contents relating to payment to stringers	628	1258
53—Telegram dated February 29, 1960 from Faber, New York Times directed to the Managing Editor of twenty-one newspapers (3 sheets of paper)	641	1271
54—Telegram dated March 24, 1960 from Faber, New York Times to John R. Chadwick	643	1273
55—Telegram dated March 23, 1960 signed Desmond, New York Times Sunday Review to Don McKee, Advertiser, Montgomery, Alabama and reply thereto, dated March 23, 1960	644	1274
56—Telegram dated March 2, 1960 from Desmond, New York Times Sunday Review to Don McKee and reply thereto, dated March 2, 1960	645	1275
57—Telegram dated April 13, 1960 from John Chadwick to Harold Faber and telegram dated April 13, 1960 from Potter, New York Times to John Chadwick	647	1277
58—Telegram dated April 15, 1960 from John Chadwick to Harold Faber and reply from O'Neill to John R. Chadwick	648	1278
59—Two telegrams, not dated, from John Chadwick to Harold Faber re Railroad Featherbed Dispute	649	1279
60—Letter dated January 26, 1959 from Don McKee to Mr. Faber and reply dated January 30, 1959	650	1280

	Original	Print
Plaintiff's Exhibits—Continued		
61—Exchange of correspondence between Harold Faber and Edward Swietnicki regarding employment, dated July 25, 1957, July 28, 1957 and September 15, 1957	650	1281
62—Blank card for pertinent information for appointment as New York Times correspondent	652	1283
63-67—Correspondence between Robert J. Murphy and Mr. Hal Faber, dated January 14, 1957, January 17, 1957, (2) January 20, 1957 and July 15, 1957 regarding employment	653	1284
68—Letter from Harold Faber to John R. Chadwick, exhibit not dated, but in text, date given as February 12, 1956	656	1288
69—Letter from Harold Faber to John R. Chadwick, dated April 20, 1958	657	1289
70—Letter from John R. Chadwick to Harold Faber, dated May 9, 1958 with enclosures relating to fire-ants	657	1289
71—Letter from John R. Chadwick to Harold Faber, dated January 21, 1959 and reply dated January 24, 1959	663	1295
72—Letter from Harold Faber to Don McKee, dated January 23, 1959	664	1296
73—Letter from Harold Faber to Mr. James H. Strickland, dated January 7, 1957	665	1297
74—Letter from Harold Faber to Mr. H. D. Cullen, dated March 25, 1957	665	1297
75—Letter from Hy Brown to National News Desk, The New York Times, dated February 21, 1957	665	1298
76—Transmittal letter from Beddow, Embry & Beddow to Clerk, Circuit Court of Montgomery County dated July 13, 1960 forwarding twenty-eight photostat copies of New York Times checks paid to stringers in Alabama and reverse sides of checks	666	1299
77—Advertisement, The New York Times, Sunday, March 11, 1956 regarding "What The South is Doing About Desegregation"	695	1329

	Original	Print
Plaintiff's Exhibits—Continued		
78—Telegram dated April 14, 1960 to Mr. Robert Garst, The New York Times from Don McKee	698	1331
79–90—Photostat copies of checks of New York Times paid to stringers in Alabama and reverse sides of checks	702	1335
91–98—New York Times expense statements of Claude Sitton, Southern News for weeks ending February 4, 1960, March 22, 1960, January 28, 1960, January 6, 1959, December 23, 1958, July, 1958, June 12, 1958 and May, 1958	753	1356
99–103—New York Times expense statements of John N. Popham, dated August 26, May 1, April 11, 1957, March 3, 1957 and May 16, 1956	761	1364
104–110—New York Times expense statements of Wayne Phillips for weeks ending February 11, 1956, February 18, 1956, February 25, 1956, March 3, 1956, March 10, 1956, March 17, 1956 and March 24, 1956	766	1369
111–114—New York Times expense statements of George Barrett dated September 16–October 8, March 7, 1957, December 20–December 24, December 10, 1956	773	1376
115—New York Times expense statement of Peter Frederick Kihss for week ending March 2, 1956	777	1380
116—New York Times expense statement of Clarence Dean for week ending January 10, 1957	778	1381
117—New York Times expense statement of H. E. Salisbury for week ending April 13, 1960	779	1382
VOLUME 4		
118—New York Times issue of February 28, 1956 article "Business Suffers by Racial Dispute. Montgomery Merchants Who Deal with Negroes and Whites are Hard Hit" by Wayne Phillips, Special to The New York Times, datelined Montgomery, Alabama, February 27	780	1383

	Original	Print
Plaintiff's Exhibits—Continued		
119—New York Times issue of February 27, 1956 article "Negro Pastors Press Bus Boycott by Preaching Passive Resistance, etc." by Wayne Phillips, Special to The New York Times, datelined Montgomery, Alabama, February 26	783	1386
120—New York Times Magazine issue of February 26, 1956 article "Tuscaloosa: A Tense Drama Unfolds" by Wayne Phillips, datelined Tuscaloosa, Alabama	785	1388
121—New York Times issue of February 25, 1956, article "Folsom Proposes Bi-Racial Group To Fight Tension, etc." by Wayne Phillips, Special to the New York Times, datelined Montgomery, Alabama, February 24	799	1399
122—New York Times issue of February 24, 1956 article "Negroes Pledge To Keep Boycott" by Wayne Phillips, Special to the New York Times, datelined Montgomery, Alabama, February 23	808	1408
123—New York Times issue of February 23, 1956 article "Dean Is Critical of Miss Lucy's Bid" by Wayne Phillips, Special to the New York Times, datelined Tuscaloosa, February 21	811	1410
124—New York Times issue of February 18, 1956 article "Tuscaloosa Gets a White Council" by Wayne Phillips, Special to the New York Times, datelined Tuscaloosa, Alabama, February 17	813	1413
125—New York Times issue of February 17, 1956 article "Alabama U. Head Decries Mob Rule" by Wayne Phillips, Special to the New York Times, datelined Tuscaloosa, Alabama, February 16	816	1416
126—New York Times issue of February 16, 1956, article "Student Beaten, 2 Negroes Jailed" by Wayne Phillips, Special to the New York Times, Tuscaloosa, Alabama, datelined February 15	821	1420

	Original	Print
Plaintiff's Exhibits—Continued		
127—New York Times issue of February 14, 1956, article "Alabama U. To Make High Court Appeal" by Wayne Phillips, Special to the New York Times, Birmingham, Ala., datelined February 13	822	1422
128—New York Times issue of February 12, 1956, article "Miss Lucy's Education: Segregation Test Case" by Wayne Phillips, Special to the New York Times, datelined Tuscaloosa, Alabama, February 11	827	1426
129—New York Times issue of March 11, 1956, article "Tuscaloosa Calm Now, But Tensions Run Deep" by Wayne Phillips, Special to the New York Times, datelined Tuscaloosa, Alabama, March 10	832	1431
130—New York Times issue of March 10, 1956, article, "Miss Lucy Seeks Fall Admission" by Wayne Phillips, Special to the New York Times, datelined Birmingham, Alabama, March 9	837	1436
131—New York Times article, "Student Exhorts Alabama Rally" by Wayne Phillips, Special to the New York Times, datelined Birmingham, Ala., March 6	841	1440
132—New York Times issue of March 6, 1956, article "White Councils Split in Alabama" by Wayne Phillips, Special to the New York Times, datelined Birmingham, Alabama, March 5	843	1442
133—New York Times issue of March 4, 1956, article "Montgomery is Stage for A Tense Drama" by Wayne Phillips, Special to the New York Times, datelined Montgomery, Alabama, March 3	845	1444
134—New York Times issue of March 4, 1956, article "Alabama To Heed Courts on Taking Negro Students" by Wayne Phillips, Special to the New York Times, datelined Tuscaloosa, Alabama, March 3	850	1449

	Original	Print
Plaintiff's Exhibits—Continued		
135—New York Times issue of March 2, 1956, article "University Ousts Miss Lucy Because of Her Charges" by Wayne Phillips, Special to the New York Times, datelined Birmingham, Alabama, March 1	853	1451
136—New York Times issue of March 13, 1956 article "III. States Resisting Alabama" by Peter Kihss	854	1452
137—New York Times issue of March 13, 1956 article "Alabama Expels Student in Riots" by Wayne Phillips, Special to The New York Times, datelined Tuscaloosa, Alabama, March 12	861	1460
138—New York Times issue of March 18, 1956, article "Report on The South: A Summary of the New York Times Survey"	865	1463
139—New York Times issue of March 1, 1956, article "U.S. Judge Orders Alabama Co-Ed to be Reinstated" by Wayne Phillips, Special to the New York Times, datelined Birmingham, Alabama, February 29	879	1476
140—New York Times issue of February 29, 1956, article "Folsom To Call Special Session" by Wayne Phillips, Special to The New York Times, datelined Montgomery, Alabama, February 28	883	1481
141—New York Times issue of February 11, 1956 article "10,000 In Alabama Hail Segregation" by Wayne Phillips, Special to The New York Times, datelined Montgomery, Alabama, February 10	887	1484
142—New York Times issue of April 29, 1956 article "Students Weigh Solution on Bias" by John N. Popham, Special to The New York Times, datelined Talladega, Alabama, April 28	893	1489
143—New York Times issue of April 27, 1956 article "Negroes To Keep Boycotting Buses" by John N. Popham, Special to The New York Times, datelined Montgomery, Alabama, April 26	895	1491

	Original	Print
Plaintiff's Exhibits—Continued		
144—New York Times issue of April 26, 1956 article "Bus Boycott Firm in Alabama City" by John N. Popham, Special to The New York Times, datelined Montgomery, Alabama, April 25	897	1493
145—New York Times issue of April 24, 1956 article "Conviction Spurs Negroes' Boycott" by Wayne Phillips, Special to The New York Times, datelined Montgomery, Alabama, March 23	899	1495
146—New York Times issue of March 23, 1956 article "Negro Minister Convicted of Directing Bus Boycott" by Wayne Phillips, Special to The New York Times, datelined Montgomery, Alabama, March 22	901	1497
147—New York Times issue of December 24, 1956, article "Shot Hits Home of Bus Bias Foe" by George Barrett, Special to The New York Times, datelined Montgomery, Alabama, December 23	905	1501
148—New York Times issue of December 23, 1956 article "White Dissidents Stir Bus Clashes" by George Barrett, Special to The New York Times, datelined Montgomery, Alabama, December 22	907	1503
149—New York Times issue of December 22, 1956 article "Bus Integration in Alabama Calm" by George Barrett, Special to The New York Times, datelined Montgomery, Alabama, December 21	909	1505
150—New York Times issue of December 16, 1956 article "Montgomery: Testing Ground" by George Barrett, Montgomery, Alabama	912	1508
154—New York Times issue of January 10, 1959 article "Defiant Judge Told To Yield Voter Roll" by Claude Sitton, Special to The New York Times, datelined Montgomery, Alabama, January 9	921	1515

	Original	Print
Plaintiff's Exhibits—Continued		
155—New York Times issue of December 10, 1958 article "Rights Unit Asks U.S. Writ for Alabama Voting Data" by Claude Sitton, Special to The New York Times, datelined Montgomery, Alabama, December 9	923	1518
156—New York Times issue of December 9, 1958 article "Alabamans Defy U.S. Rights Board at First Hearing" by Claude Sitton, Special to The New York Times, datelined Montgomery, Alabama, December 8	927	1521
157—New York Times issue of June 27, 1957, article "Expert Attacks Missile Secrecy" by Russell Porter, Special to The New York Times, datelined Huntsville, Alabama, June 26	934	1528
158—New York Times issue of June 24, 1957, article "Security Marks Nickerson Trial" by Russell Porter, Special to The New York Times, datelined Huntsville, Alabama, June 23	938	1532
159—New York Times issue of March 3, 1957, article "Jim Crow, He's Real Tired" by George Barrett	939	1534
160—New York Times issue of January 18, 1957, article "A Dynamite Bomb Found In Alabama" by Phillip Benjamin, Special to The New York Times, datelined Montgomery, Alabama, January 17	945	1539
161—New York Times issue of January 1, 1957, article "A Sniper Fires on 4th Alabama Bus" by Clarence Dean, Special to The New York Times, datelined Montgomery, Alabama, December 31	947	1541
162—New York Times issue of January 12, 1957, article "Violence Stops in Montgomery" by Philip Benjamin, Special to The New York Times, datelined Montgomery, Alabama, January 11	949	1543
163—New York Times issue of December 28, 1956, article "Birmingham Defiance Ends" by Clarence Dean, Special to The New York Times, datelined Birmingham, Alabama, December 27	950	1545

	Original	Print
Plaintiff's Exhibits—Continued		
164—New York Times issue of January 14, 1959, article "Alabama Jurors Offer Vote Files" by Claude Sitton, Special to The New York Times, datelined Clayton, Alabama, January 13	982	1546
165—New York Times issue of April 13, 1960, article "Race Issue Shakes Alabama Structure" by Harrison E. Salisbury, Special to The New York Times, datelined Birmingham, Alabama, April 9	955	1549
166—New York Times issue of April 12, 1960, article "Fear and Hatred Grip Birmingham" by Harrison E. Salisbury, Special to The New York Times, datelined Birmingham, Alabama, April 8	961	1556
167—New York Times issue of April 3, 1960, article "Clergy Exhorted To Help Negroes" by Harrison E. Salisbury, Special to The New York Times, datelined Andalusia, Alabama, April 2	968	1562
168—New York Times issue of March 7, 1960, article "Negroes Dispersed In Alabama March" by Claude Sitton, Special to The New York Times, datelined, Montgomery, Alabama, March 6	972	1565
169—New York Times issue of March 2, 1960, article "1,000 Negroes Join March In Alabama" by Claude Sitton, Special to The New York Times, datelined, Montgomery, Alabama, March 1	975	1568
170—New York Times issue of January 27, 1959, article "U. S. Court Clears Alabama Judge in Rights Dispute" by Russell Porter, Special to The New York Times, datelined Montgomery, Alabama, January 26	976	1569
171—New York Times issue of January 16, 1959, article "Alabama Judge Faces U. S. Action" by Claude Sitton, Special to The New York Times, datelined Montgomery, Alabama, January 15	982	1573

	Original	Print
Plaintiff's Exhibits—Continued		
172—New York Times issue of January 15, 1959, article "County in Alabama Yields Voting Files on Its Own Terms" by Claude Sitton, Special to The New York Times, datelined Union Springs, Alabama, January 14	984	1576
173—New York Times issue of January 13, 1959, article "U. S. Court Defied on Vote Records" by Claude Sitton, Special to The New York Times, datelined Clayton, Alabama, January 12	987	1578
174—New York Times issue of January 19, 1958, article "School Fight Opens in Deep South" by John N. Popham, Special to The New York Times, datelined Chattanooga, Tennessee, January 18	989	1581
175—Article, "U.S. Negro Gains Held Scant in '59" by Claude Sitton, Special to The New York Times, datelined Atlanta, January 23	993	1584
176—New York Times issue of January 20, article "Patterson Backs Separate Schools", datelined Montgomery, Alabama, January 19	995	1586
178—New York Times issue of July 7, 1959, article "Birmingham Resists Church Integration" by John Wicklein	996	1587
185—New York Times issue of February 22, 1957, article "Alabama U. Alumnus Urges Ban on Co-Ed", Special to The New York Times, datelined, Tuscaloosa, Alabama, February 21	1009	1600
186—New York Times issue of February 1, 1956, article "Negro Student Admitted", Special to The New York Times, datelined Birmingham, Alabama, January 31	1010	1600
187—New York Times issue of January 8, 1956, article "Negroes' Boycott Cripples Bus Line", Special to The New York Times, datelined Montgomery, Alabama, January 7	1011	1602
188—New York Times issue of February 26, 1956, article "Lucy Case Splits Alabama Unions", Special to The New York Times, datelined Tuscaloosa, Alabama, February 25	1013	1604

	Original	Print
Plaintiff's Exhibits—Continued		
189—New York Times issue of January 29, 1956, article "Democrats Curb Alabama Bolters", datelined Montgomery, Alabama, January 28	1016	1607
190—New York Times issue of January 8, 1956, article "Phenix City Honored", datelined, Phenix City, Alabama, January 7	1018	1608
191—New York Times issue of January 24, 1956, article "Legislative Revolt In Alabama Settled", Special to The New York Times, datelined Montgomery, Alabama, January 23	1018	1609
192—New York Times issue of January 24, 1956, article "Bid to End Boycott Unheeded", Special to The New York Times, datelined Montgomery, Alabama, January 23	1019	1610
193—New York Times issue of March 1, 1956, article "Federal Bus Trials Sought", Special to The New York Times, datelined Birmingham, Alabama, February 29	1020	1610
194—New York Times issue of March 21, 1956, article "Battle Against Tradition", Special to The New York Times, datelined Montgomery, Alabama, March 20	1020	1611
195—New York Times issue of March 22, 1956, article "Montgomery Negroes Tell Court of Abuse by City's Bus Drivers" by Wayne Phillips, Special to The New York Times, datelined Montgomery, Alabama, March 21	1024	1615
196—New York Times issue of April 24, 1956, article "Army Seeks Ordnance Aides", Special to The New York Times, datelined Huntsville, Alabama, April 23	1026	1616
197—New York Times issue of April 25, 1956, article "Boycott Continues," Special to The New York Times, datelined Montgomery, Alabama, April 24	1026	1617
198—New York Times issue of October 14, 1956. article "Court Holds Key To Bus Boycott", Special to the New York Times, datelined Montgomery, Alabama, October 13	1027	1618

	Original	Print
Plaintiff's Exhibits—Continued		
199—New York Times issue of December 21, 1956, article "Negroes To Test Bus Ruling Today"	1029	1620
200—New York Times issue of December 7, 1956, article "Negroes Mark Boycott", Special to The New York Times, datelined Montgomery, Alabama, December 6	1031	1622
201—New York Times issue of December 29, 1956, article "Negro Wounded In Alabama Bus"	1031	1622
202—New York Times issue of December 29, 1956, article "Negro Wounded on Alabama Bus", Special to The New York Times, datelined Montgomery, Alabama, December 28	1033	1624
203—New York Times issue of December 30, 1956, article "Montgomery Sets a Night Bus Ban"	1034	1625
204—New York Times issue of December 30, 1956, article "Montgomery Bars Bus Runs At Night", Special to The New York Times, datelined Montgomery, Alabama, December 29	1035	1626
205—New York Times issue of December 31, 1956, article "Racial Violence Found Declining", datelined Tuskegee, Alabama, December 30	1036	1627
206—New York Times issue of January 3, 1957, article "Montgomery Buses Kept Under Curfew", Special to The New York Times, datelined Montgomery, Alabama, January 2	1038	1629
207—New York Times issue of January 14, 1957, article "Nonviolence Stressed", Special to The New York Times, datelined Montgomery, Alabama, January 13	1038	1629
208—New York Times issue of January 16, 1957, article "Bus Service Resumed", Special to The New York Times, datelined Montgomery, Alabama, January 15	1039	1630

	Original	Print
Plaintiff's Exhibits—Continued		
209—New York Times issue of January 17, 1957, article "Montgomery Busses Resume Day Service", Special to The New York Times, datelined Montgomery, Alabama, January 16	1039	1630
210—New York Times issue of January 26, 1957, article "Suit Asks Ban on Bias", Special to The New York Times, datelined Birmingham, Alabama, January 25	1040	1631
211—New York Times issue of February 22, 1957, article "Negroes Win Bus Test", Special to The New York Times, datelined Birmingham, Alabama, February 21	1041	1632
212—New York Times issue of March 3, 1957, article "Shipbuilders Sign Wage Pact", Special to The New York Times, datelined Mobile, Alabama, March 2	1041	1632
213—New York Times issue of March 17, 1957, article "New Voter Board Wary In Alabama", Special to The New York Times, datelined Notasulga, Alabama, March 16	1042	1633
214—New York Times issue of March 17, 1957, article "Dr. Seale Harris, Physician, Is Dead", Special to The New York Times, datelined Birmingham, Alabama, March 16	1044	1635
215—New York Times issue of December 19, 1957, article "Voting In Alabama Marked By Apathy", Special to The New York Times, datelined Birmingham, Alabama, December 18	1045	1636
216—New York Times issue of January 6, 1958, article "Beef Cattle Up In Alabama", Special to The New York Times, datelined Montgomery, Alabama	1046	1637
217—New York Times issue of May 16, 1957, article "Teacher At Auburn Ousted In Bias Case", Special to The New York Times, datelined Auburn, Alabama, May 14	1046	1637
218—New York Times issue of July 7, 1957, article "Negroes Stopping Alabama Boycott", Special to The New York Times, datelined Tuskegee, Alabama, July 6	1047	1638

	Original	Print
Plaintiff's Exhibits—Continued		
219—New York Times issue of September 6, 1957, article "College Head Named", Special to The New York Times, datelined Montgomery, Alabama, September 5	1050	1641
220—New York Times issue of June 4, 1958, article "Patterson Gains Alabama Victory", Special to The New York Times, datelined Birmingham, Alabama, June 3	1050	1641
221—New York Times issue of July 24, 1959, article "Budgets 'Hedged' ", Special to The New York Times, datelined Birmingham, Alabama, July 23	1052	1643
222—New York Times issue of November 14, 1958, article "Rogers Orders U. S. Jury to Study Arrest of 3"	1053	1644
223—New York Times issue of December 7, 1958, article "Bus Boycott Gain Seen By Negroes", Special to The New York Times, datelined Montgomery, Alabama, December 6	1054	1645
224—New York Times issue of December 7, 1958, article "Civil Rights Unit To Open Hearing", Special to The New York Times, datelined Montgomery, Alabama, December 6	1055	1647
225—New York Times issue of February 7, 1959, article "U.S. Alabama Suit Asks Negro Vote"	1058	1650
226—New York Times issue of February 7, 1959, article "U.S. Alabama Suit Asks Negro Voting", Special to The New York Times, datelined Montgomery, Alabama, February 6	1060	1651
227—New York Times issue of February 21, 1959, article "Alabama Session Ends", Special to The New York Times, datelined Montgomery, Alabama, February 20	1060	1652
228—New York Times issue of March 8, 1959, article "Alabama School Trains The Elite", Special to The New York Times, datelined Helena, Alabama, March 7	1061	1653

	Original	Print
Plaintiff's Exhibits—Continued		
229—New York Times issue of March 8, 1960, article "Further Protests Forecast", Special to The New York Times, datelined Montgomery, Alabama, March 7	1063	1655
230—New York Times issue of September 13, 1957, article "Birmingham Quiet as Tension Eases", Special to The New York Times, datelined Birmingham, Alabama, September 12	1064	1656
231—New York Times issue of July 3, 1956, article "Boycott Ending 7th Month", Special to The New York Times, datelined Montgomery, Alabama, July 2	1065	1657
232—New York Times issue of April 10, 1960, page 50, article "Alabama Forming Race-Riot Posses", Special to The New York Times, datelined April 9, 1960	1065	1657
237—New York Times issue of January 11, 1957, article "Other Banks", Special to The New York Times, datelined January 10	1068	1660
239—New York Times issue of January 12, 1956, article "Birmingham", Special to The New York Times, datelined Birmingham, Alabama, January 11	1069	1660
240–265—Twenty-five pages of The New York Times newspaper of various dates containing Alabama Ads	1069	1661
266–269—New York Times Advertising Department Expense Statements for Frank M. Monger and Thomas M. Hurley for weeks ending January 8, 1960, December 4, 1959, October 31, 1959 and August 21, 1959	1089	1683
270 & 271—Letters from Edward T. Kennedy to Mayor, City of Montgomery, dated January 22, 1960 and July 14, 1960	1093	1687
272—Court reporter's note	1095	1689
273—Special Advertising Rotogravure section of New York Times newspaper, dated February 2, 1958, designated as "The Alabama Supplement"	1095	1689

	Original	Print
Plaintiff's Exhibits—Continued		
Reporter's and clerks' certificates (omitted in printing)	1146a	1733
273—Continued	1147	1733
274—Letter from Joseph B. Wagner to Ralph Silver, dated September 9, 1957 describing generally the terms and conditions for payment to advertising agency, Silver & Douce Company, Inc.	1160	1743
275—Advertisement entitled, "Heed Their Rising Voices" published in The New York Times issue of March 29, 1960, page 25	1163	1746
276—Statement of New York Times for Institute Newsstand, Tuskegee, Alabama showing charges for number of papers delivered and allowances, 1960	1168	1751
277—New York Times credit memorandums for Carter News Agency in Mobile, Alabama showing number of papers sold and returned for various dates in 1960	1170	1753
278—New York Times credit memorandums for Stahbehl's News Agency, Selma, Alabama showing number of papers sold and returned for various dates in 1960	1178	1761
279—New York Times credit memorandums for Jefferson News Co., Birmingham, Alabama, showing number of papers sold and returned for various dates in 1960	1179	1762
280—New York Times orders and credit memorandums for Montgomery News Co., Montgomery, Alabama showing number of papers sold and returned for various dates in 1960	1196	1779
281—New York Times orders and credit memorandums for Anderson News Co., Florence, Alabama showing number of papers sold and returned for various dates in 1960	1201	1784
282—New York Times orders and credit memorandums for Lewis Drug & Seed Store, Tuskegee, Alabama showing number of papers sold and returned for various dates in 1959	1211	1794

	Original	Print
Plaintiff's Exhibits—Continued		
283—New York Times orders and credit memorandums for A. G. Bridges, Tuscaloosa, Alabama for various dates in 1960	1215	1798
284—New York Times credits and charges for Lurie News Co., Dothan, Alabama showing number of papers sold and returned for first half of 1960	1217	1800
285—New York Times credits and charges for Carlisle Drug Co., Alexander City, Ala. showing number of papers sold and returned for first half of 1960	1218	1801
286—New York Times credits and charges for Brown's Pharmacy, Ozark, Ala. showing number of papers sold and returned for first half of 1960	1219	1802
287—New York Times credits and charges for Grammage Bros., Greenville, Ala. showing number of papers sold and returned for first half of 1960	1220	1803
288—New York Times credits and charges for Lustig Book Shop, Tuscaloosa, Ala. showing number of papers sold and returned for first half of 1960	1221	1804
289—New York Times credits and charges for City News & Tobacco Shop, Talladega, Ala. showing number of papers sold and returned for first half of 1960	1222	1805
290—New York Times credits and charges for Lewis Drug & Seed Store, Tuskegee, Ala. showing number of papers sold and returned for first half of 1960	1223	1806
291—New York Times credits and charges for Radio News Co., Bessemer, Ala. showing number of papers sold and returned for first half of 1960	1224	1807
292—New York Times credits and charges for Gadsden News Co., Gadsden, Ala. showing number of papers sold and returned for various dates in 1959	1225	1808

	Original	Print
Plaintiff's Exhibits—Continued		
293—New York Times credits and charges for Carlisle Drug Co., Alexander City, Ala., showing number of papers sold and returned for 1959	1227	1810
294—New York Times credits and charges for Carter's News Agency, Mobile, Alabama, showing number of papers sold and returned for 1959	1228	1811
295—New York Times credits and charges for Jefferson News Co., Birmingham, Ala. showing number of papers sold and returned for 1959	1229	1812
296—New York Times credits and charges for Gadsden News Co., E. Gadsden, Ala. showing number of papers sold and returned for first half of 1960	1230	1813
297—New York Times credits and charges for Anderson News, Florence, Ala. showing number of papers sold and returned for 1960	1231	1814
298—New York Times credits and charges for Montgomery News Co., Montgomery, Ala. showing number of papers sold and returned for 1960	1232	1815
299—New York Times credits and charges for Lurie News Co., Dothan, Ala. showing number of papers sold and returned for 1959	1233	1816
300—New York Times credits and charges for Tuskegee Institute, Institute N. S., Ala. showing number of papers sold and returned for 1959	1234	1817
301—New York Times credits and charges for A. G. Bridges, Tuscaloosa, Ala. showing number of papers sold and returned	1235	1818
302—New York Times credits and charges for Lustig Book Shop, Tuscaloosa, Ala. showing number of papers sold and returned for 1959	1236	1819
303—New York Times credits and charges for City News & Tobacco Shop, Talladega, Ala. showing number of papers sold and returned for 1959	1237	1820

	Original	Print
Plaintiff's Exhibits—Continued		
304—New York Times credits and charges for Stahbehl's News Agency, Selma, Ala. showing number of papers sold and returned for 1959	1238	1821
305—New York Times credits and charges for Brown's Pharmacy, Ozark, Ala. showing number of papers sold and returned for 1959	1239	1822
306—New York Times credits and charges for Maxwell AFB, Intelligence & Bibliography Branch, Maxwell AFB, Ala. for 1959	1240	1823
307—New York Times credits and charges showing number of papers sold and returned	1242	1825
308—New York Times credits and charges for Grammage Bros., Greenville, Ala. showing number of papers sold and returned for 1959	1243	1826
309—New York Times credits and charges for Radio News Co., Bessemer, Ala. showing number of papers sold and returned for 1959	1244	1827
310—New York Times brochure pertaining to The New York Times Index	1245	1828
VOLUME 5		
311—Petition for writ of mandamus filed in the Supreme Court of Alabama, June 29, 1960 in The Matter of Ex Parte, The New York Times Company, A Corporation v. Honorable Walter B. Jones, etc. and exhibits thereto	1251	1835
Exhibit A—Summons and complaint filed in case of L. B. Sullivan v. The New York Times Company, No. 27416 (copy) (omitted in printing)	1262	1846
Exhibit A—Advertisement entitled, "Heed Their Rising Voices" published in The New York Times issue of March 29, 1960, page 25 (copy) (omitted in printing)	1267	1846
Exhibit B—Motion to quash service of process filed in case of L. B. Sullivan v. The New York Times Company, No. 27416 (copy) (omitted in printing)	1271	1846

	Original	Print
Plaintiff's Exhibits—Continued		
Exhibit C—Motion to produce filed in case of L. B. Sullivan v. The New York Times Company, No. 578 (copy) (omitted in printing)	1279	1846
Affidavit of M. R. Nachman, Jr. (copy) (omitted in printing)	1284	1846
Exhibit D—Ruling of Court on plaintiff's motion to produce in case of L. B. Sullivan v. The New York Times Company, No. 27416 (copy) (omitted in printing)	1286	1846
Exhibit E—Exception to Court's ruling on plaintiff's motion to produce in the case of L. B. Sullivan v. The New York Times Company, No. 578 (copy) (omitted in printing)	1288	1846
312—Memorandum brief of authorities in support of petition for mandamus filed in Supreme Court of Alabama, June 29, 1960 in Ex Parte, The New York Times Company, a Corporation v. Honorable Walter B. Jones, etc., No. 927	1289	1848
Certificate thereto of J. Render Thomas, Clerk of the Supreme Court of Alabama	1299	1856
313—Order of the Supreme Court of Alabama denying the writ and dismissing the petition In the Matter of Ex Parte, The New York Times Company, a Corporation, etc. No. 927	1299	1856
Certificate thereto of J. Render Thomas, Clerk of the Supreme Court of Alabama	1301	1858
314—Notice of taking of deposition In the Matter of L. B. Sullivan, Plaintiff versus The New York Times Company, a corporation, and Others, In the Circuit Court of Montgomery County, Alabama, Case No. 578, No. 579 and No. 580, etc.	1302	1859

	Original	Print
Plaintiff's Exhibits—Continued		
315—Depositions of Claude F. Sitton and Thomas M. Hurley taken June 3, 1960 In The Matter of L. B. Sullivan v. The New York Times Company, a Corporation, et al. No. 580 and certificate thereto	1306	1863
Attachment—Plaintiff's Exhibit 232—New York Times issue of April 10, 1960, article, "Alabama Forming Race-Riot Posses", Special to The New York Times, datelined April 9, 1960 (copy) (omitted in printing)	1356	1912
316–333—Eighteen account cards showing the customers in the State of Alabama to whom the New York Times Index was sold, giving dates, credits, debits and remarks	1359	1913
334–346—Thirteen account cards showing the customers in the State of Alabama to whom microfilm sets of The New York Times was sold, giving dates, credits, debits and remarks	1366	1920
347—Advertisement entitled, "Heed Their Rising Voices" published in The New York Times issue of March 29, 1960, page 25	1371	1925
348—Answers of Defendant, New York Times Company to interrogatories filed September 30, 1960 in the case of L. B. Sullivan v. The New York Times Company, No. 27416	1376	1930
Interrogatories to defendant, The New York Times Company (copy) (omitted in printing)	1383	1938
Answers of Defendant, New York Times Company to interrogatories filed September 16, 1960 in the case of L. B. Sullivan v. The New York Times Company, No. 578	1387	1938
Exhibit A to Answer—Advertisement entitled "Heed Their Rising Voices" published in The New York Times issue of March 29, 1960, page 25	1392	1944

	Original	Print
Plaintiff's Exhibits—Continued		
348—Continued		
Exhibit B to Answer—Letter of Authorization to Use Names from A. Philip Randolph to Mr. Jerry Aaronson, New York Times, dated March 23, 1960	1397	1948
Exhibit C to Answer—Letter to demand retraction from L. B. Sullivan, Commissioner to New York Times, dated March 8, 1960	1397	1949
Exhibit D to Answer—Reply to such demand by letter from Lord, Day & Lord (General Counsel for New York Times) to Honorable L. B. Sullivan, dated April 15, 1960	1399	1951
Exhibit E to Answer—Retraction with reference to the advertisement referred to in response to a demand from Governor John Patterson of the State of Alabama	1399	1952
Exhibit F to Answer—Booklet entitled, "New York Times Advertising Acceptability Standards"	1400	1952
349—New York Times issue of March 2, 1960 article "1000 Negroes Join March In Alabama" by Claude Sitton, Special to the New York Times, datelined Montgomery, March 1 (copy) (omitted in printing)	1405	1957
350—Union Advertising Service of New York City, order blank for publication re: New York Times, dated March 28, 1960, "National Committee to Defend Martin Luther King, Jr."	1407	1957
351—New York Times issue of May 16, 1960, article "Times Retracts Statement in Ad"	1408	1958
355—Letter from Commissioner L. B. Sullivan to Ralph D. Abernathy, dated March 8, 1960	1412	1962

	Original	Print
Plaintiff's Exhibits—Continued		
356—Letter from Commissioner L. B. Sullivan to S. S. Seay, dated March 8, 1960	1413	1964
357—Letter from Commissioner L. B. Sullivan to J. E. Lowery, dated March 8, 1960	1414	1965
358—Letter from Commissioner L. B. Sullivan to Fred Shuttlesworth, dated March 8, 1960	1416	1967
359–362—Post Department return receipts for Ralph D. Abernathy, S. S. Seay, J. E. Lowery and Fred L. Shuttlesworth which accompanied the letters for retraction	1417	1969
363—Letter from Lord, Day and Lord to Commissioner L. B. Sullivan, dated April 15, 1960	1418	1971
364—Excerpt from Minutes of the Alabama State Board of Education meeting held March 2, 1960, entitled "Expulsion of Certain Students, Alabama State College"	1419	1972
365—City of Montgomery, Alabama, Recorder's Court record of Jefferson Underwood, dated March 8, 1960, No. 89426 and No. 89427 and record of Alean R. Underwood, dated March 8, 1960, No. 89418 and No. 89417 which show that fines were paid	1422	1975
Defendants' Exhibits on motion to quash:		
1—Memorandum, dated May 13, 1960 prepared by Roger Atwood for Mr. Wagner showing a breakdown of the amount of time members of The New York Times staff spent in Alabama in 1959 and 1960	1424	1978
2—Memorandum entitled "Alabama Accounts" for the year 1959 and January April 1960 showing lineage	1425	1979
3—Union Advertising Service of New York City, order blank for publication re: New York Times dated March 28, 1960, "National Committee To Defend Martin Luther King, Jr."	1426	1980
4—Memorandum prepared by Roger J. Water showing circulation of New York Times in Alabama in 1960	1426	1981

	Original	Print
Defendants' Exhibits on motion to quash—Continued		
5—Memorandum prepared by Roger J. Water listing Wholesale Dealers and Direct Accounts in Alabama	1427	1981
Defendants' Exhibits on merits:		
6—Union Advertising Service of New York City, order blank for publication re: New York Times dated March 28, 1960, "National Committee To Defend Martin Luther King, Jr."	1428	1982
Term of payment, Rates, Advertising Material, etc. of Advertising Agency	1429	1985
Advertisement entitled "Heed Their Rising Voices" published in The New York Times issue of March 29, 1960, page 25, printer's proof	1431	1987
7—Letter of authorization to use Names from A. Philip Randolph to Mr. Jerry Aaronson, The New York Times, dated March 23, 1960	1436	1992
8—Manuscript of advertisement "Heed Their Rising Voices" published in The New York Times issue of March 29, 1960, page 25	1436	1993
9—Letter from Orvil Dryfoos to Governor Patterson, Montgomery, Alabama, dated May 18, 1960	1441	1998
Reporter's and clerks' certificates (omitted in printing)	1441a	1998
Defendants' Exhibits on motion for a new trial:		
1—The Montgomery Advertiser issue of April 16, article "Research on Move to Sue Times Finished by Gallion"	1443	1999
2—The Montgomery Advertiser issue of April 9, 1960, article "Commissioners Demand Retraction"	1443	2000
3—The Montgomery Advertiser issue of April 8, 1960, article "Gallion Weighs Legal Action Against 'King Ad' Sponsors"	1444	2001

	Original	Print
Defendants' Exhibits on motion for a new trial —Continued		
4—The Montgomery Advertiser issue of April 20, 1960, article "Commissioners Sue Newspaper", by Arthur Osgoode	1447	2003
5—The Montgomery Advertiser issue of April 28, 1960, article "Patterson Plans N.Y. Times Suit"	1449	2006
6—The Montgomery Advertiser issue of April 19, 1960, article "Gallion Libel Suit Decision Ready Today"	1451	2007
7—The Montgomery Advertiser issue of April 15, 1960, article "The Big Lie" by E. L. Holland, Jr.	1452	2008
8—The Montgomery Advertiser issue of April 16, 1960, article "Commissioners To File Damage Suits Against New York Times For Articles"	1455	2011
9—The Montgomery Advertiser issue of April 17, 1960, article "The Abolitionist Hellmouths"	1456	2013
10—The Montgomery Advertiser issue of April 21, 1960, article "State Board Told to File 'Times' Suit" by Bob Ingram	1458	2015
11—The Montgomery Advertiser issue of May 21, 1960, article "Times Asks Court Quash Damage Suit"	1460	2017
12—The Montgomery Advertiser issue of April 27, 1960, article "Times Studies Correction of 2 Stories"	1462	2018
13—The Montgomery Advertiser issue of April 29, 1960, article "Gallion Lauds Suit Planned Against Paper"	1463	2019
14—The Montgomery Advertiser issue of May 1, 1960, article "The Missing If Men Choked"	1464	2020
15—The Montgomery Advertiser issue of May 12, 1960, article "$5 Million Suit Started by Governor"	1465	2022
16—The Montgomery Advertiser issue of May 4, 1960, article "Birmingham Statements Published In The Times"	1466	2023

	Original	Print
Defendants' Exhibits on motion for a new trial —Continued		
17—The Montgomery Advertiser issue of May 22, 1960, article "Fall Out From Ad Error"	1469	2025
18—The Montgomery Advertiser issue of May 7, 1960, article "Suits Filed Against Times"	1470	2026
19—The Montgomery Advertiser issue of May 17, 1960, article "Patterson Weighs Suit in Light of Retraction"	1470	2027
20—The Montgomery Advertiser issue of May 20, 1960, article "The Times Acknowledges Error"	1471	2028
21—The Montgomery Advertiser issue of May 27, 1960, article re: "Times Motion Asks Dismissal of Suits"	1473	2030
22—The Montgomery Advertiser issue of May 31, 1960, article "Five Negroes, Times Sued by Patterson" By The Associated Press	1473	2030
23—The Montgomery Advertiser issue of June 14, 1960, article "Times Challenges Bessemer Suits"	1475	2032
24—The Montgomery Advertiser issue of July 1, 1960, article "N.Y. Times Loses in Move To Have Records Closeted"	1475	2033
25—The Montgomery Advertiser issue of June 2, 1960, article "Times Switches 'Bama, Ole Miss"	1477	2034
26—The Montgomery Advertiser issue of June 1, 1960, article re: "Times Sued by Officials in Bessemer"	1477	2035
27—The Montgomery Advertiser issue of July 27, 1960, article "Lawyers Add to Documents In Libel Suit" by Arthur Osgoode	1478	2035
28—The Montgomery Advertiser issue of July 28, 1960, article "Times Suit Testimony Ends, Arguments Set" by Arthur Osgoode	1481	2038
29—The Montgomery Advertiser issue of July 20, 1960, article "Detective's Suit Charges Times"	1483	2041
30—The Montgomery Advertiser issue of July 26, 1960, article "Attorneys Contend N.Y. Times Didn't Do Business In State"	1483	2041

	Original	Print
Defendants' Exhibits on motion for a new trial —Continued		
31—The Montgomery Advertiser issue of August 6, 1960, article "Judge Rules Times Suit Legal Here" by Arthur Osgoode	1485	2043
32—The Montgomery Advertiser issue of August 7, 1960, article "Attorneys Contend: Judge's Ruling Will Hinder Appeal" By The Associated Press	1488	2046
33—The Montgomery Advertiser issue of August 26, 1960, article "Jefferson Calls Times Reporter"	1489	2047
34—The Montgomery Advertiser issue of September 3, 1960, article "U.S. Judge Deals Times Legal Blow"	1490	2048
35—The Montgomery Advertiser issue of September 3, 1960, article "Methodist Leader Jailed For Refusing To Answer"	1491	2050
36—The Montgomery Advertiser issue of September 4, 1960, article re: "Methodist Minister Awaits Decision By U.S. Supreme Court"	1493	2052
37—The Montgomery Advertiser issue of September 6, 1960, article "Jury Meets Again Today In Race Study"	1495	2053
38—The Montgomery Advertiser issue of September 7, 1960, article "Jefferson Jury Indicts Times Writer For Libel"	1495	2054
39—The Montgomery Advertiser issue of September 9, 1960, article "Methodists Boot Cleric Held In Jail"	1498	2056
40—The Montgomery Advertiser issue of August 7, 1960, article "The Talk of The Town", Editor, The New Yorker Magazine	1499	2057
41—The Montgomery Advertiser issue of September 9, 1960, article "Way Cleared For Appeal By N.Y. Times"	1501	2059
42—The Montgomery Advertiser issue of September 10, 1960, article "Ousted Cleric Still Vague About Future"	1502	2061

	Original	Print
Defendants' Exhibits on motion for a new trial —Continued		
43—The Montgomery Advertiser issue of September 10, 1960, article "Times Appeals Ruling Allowing Alabama Suit"	1503	2062
44—The Montgomery Advertiser issue of September 11, 1960, article "Controversial Cleric Given African Duty"	1505	2063
45—The Montgomery Advertiser issue of September 25, 1960, article "State Finds Formidable Legal Club To Swing At Out-Of-State Press" By Rex Thomas, AP Staff Writer	1506	2064
46—The Montgomery Advertiser issue of September 22, 1960, article "Times Loses Bid To Delay Libel Trials"	1510	2069
47—The Montgomery Advertiser issue of June 8, 1960, article "Issue of Back Issues Argues In New York Times Suit Here"	1511	2070
48—The Montgomery Advertiser issue of May 16, 1960, article "N.Y. Times Retracts Two Ad Paragraphs"	1512	2071
49—The Montgomery Advertiser issue of August 2, 1960, article "Jones Studies Times Motion To Shift Suit" By Arthur Osgoode	1514	2073
50—The Montgomery Advertiser issue of October 29, 1960, article "N.Y. Times Loses Bid To Fend Off Libel Suit" By Arthur Osgoode	1516	2075
51—The Montgomery Advertiser issue of November 1, 1960, article "Times Libel Suit Opens Here Today"	1518	2077
52—The Montgomery Advertiser issue of November 1, 1960, article "Jurors Selected For Times Suit"	1520	2079
53—The Montgomery Advertiser issue of November 2, 1960, article "Witnesses Say Ad Reflected on Sullivan" By Arthur Osgoode	1522	2081
54—The Montgomery Advertiser issue of November 3, 1960, article "Writer of Ad Takes Stand In Libel Trial" By Arthur Osgoode	1526	2084

	Original	Print
Defendants' Exhibits on motion for a new trial —Continued		
55—The Montgomery Advertiser issue of November 2, 1960, article "Sullivan Case Against Times Is Continuing"	1529	2088
56—The Montgomery Advertiser issue of November 4, 1960, article "$500,000 Damages Awarded Sullivan By Times Suit Jury" By Arthur Osgoode	1532	2090
57—The Montgomery Advertiser issue of December 2, 1959, article "Grossly Unjust Says Times: Asks New Trial" By Arthur Osgoode	1535	2094
58—The Montgomery Advertiser issue of December 16, 1960, article "Lawyers In 'Times' Case Agree To Delay Hearing"	1537	2096
59—The Montgomery Advertiser issue of December 28, 1960, article "Circuit Court '61 Sessions Start January 9"	1538	2097
60—The Alabama Journal issue of December 27, 1960, article "Mayor's Suit Against Times Set For Trial"	1538	2098
61—The Montgomery Advertiser issue of January 14, 1961, article "Sullivan Suit Retrial Bid Set March 3"	1539	2098
62—The Montgomery Advertiser issue of January 18, 1961, article "Times Attorney Halted In Quizzing of Mayor"	1540	2099
63—The Montgomery Advertiser issue of January 19, 1961, article "Judge Rules Time Expired For Retrial"	1542	2101
64—The Montgomery Advertiser issue of January 30, 1961, article "Mayor's Suit Against Times Opens Today"	1542	2102
65—The Montgomery Advertiser issue of January 31, 1961, article "Witnesses Feel James Target Of Ad In Times" By Art Osgoode	1543	2103
66—The Montgomery Advertiser issue of February 5, 1961, article "Negroes Facing Seizure Of Property Seek Relief" By Dan Coggins	1547	2106

	Original	Print
Defendants' Exhibits on motion for a new trial —Continued		
67—The Montgomery Advertiser issue of February 7, 1961, article "Attachment of Money Being Sought"	1549	2108
68—The Montgomery Advertiser issue of February 8, 1961, article "Negroes' Attorneys Seek Cut In Million-Dollar Bond" By Arthur Osgoode	1550	2109
69—The Montgomery Advertiser issue of February 4, 1961, article re: "Auto Seized For Payment In Libel Case" By The Associated Press	1551	2111
70—Issue of February 3, 1961, article "New Trial Motion Set In Libel Suit"	1553	2113
71—The Montgomery Advertiser issue of February 2, 1961, article re: "Mayor Gains Libel Verdict of $500,000" By Arthur Osgoode	1554	2114
72—The Montgomery Advertiser issue of February 1, 1961, article re: "Negroes Mix at Circuit Court Libel Trial" By Arthur Osgoode	1558	2118
73—The Montgomery Advertiser issue of February 23, 1961, article "Four Negroes' Suit Names State, City Officials" By Arthur Osgoode	1561	2120
74—The Montgomery Advertiser issue of February 22, 1961, article "Car Attached From Negro Minister Sells For $400"	1562	2122
75—The Montgomery Advertiser issue of November 2, 1960, article "Witnesses Say Ad Reflected On Sullivan" By Arthur Osgoode	1563	2123
76—The Montgomery Advertiser issue of May 17, 1960, article "The Times Acknowledges Error"	1567	2126
77—The Montgomery Advertiser issue of April 7, 1960, article "Will They Purge Themselves?"	1568	2127
78—The Alabama Journal issue of April 5, 1960, article "Liberals Appeal For Funds To Defend M.L. King"	1570	2129
79—The Alabama Journal issue of April 9, 1960, article "City Demands Retraction of Ad In Times"	1572	2131

	Original	Print
Defendants' Exhibits on motion for a new trial —Continued		
80—The Alabama Journal issue of April 8, 1960, article "Gallion Plans To Take Action On Times Ad"	1573	2132
81—The Alabama Journal issue of April 9, 1960, article "Not The First Lie About South"	1575	2134
82—The Alabama Journal issue of April 16, 1960, article "B'ham. Officials To Sue N.Y. Times"	1576	2135
83—The Alabama Journal issue of April 19, 1960, article "Times Reveals Critical Letters"	1577	2136
84—The Alabama Journal issue of April 15, 1960, article "Source Says Gallion To Urge Ad Suit" By Donald F. Martin, United Press International	1577	2136
85—The Alabama Journal issue of April 17, 1960, article "Report Due On Tuesday On Libel Suit"	1579	2138
86—The Alabama Journal issue of April 18, 1960, article "Unworthy Newspaper Policy"	1580	2139
87—The Alabama Journal issue of April 19, 1960, article "Gallion Holding Recommendation For School Board"	1581	2140
88—The Alabama Journal issue of April 20, 1960, article "City Officials Sue N.Y. Times"	1582	2141
89—The Alabama Journal issue of April 21, 1960, article "Governor To Rule On Libel Suits Early Next Week"	1584	2143
90—The Alabama Journal issue of April 22, 1960, article "Not a City of Race Terror" (Reply to N.Y. Times)	1585	2145
91—The Alabama Journal issue of April 26, 1960, article "It's The Same Thing" (Greensboro Watchman)	1587	2146
92—The Alabama Journal issue of April 28, 1960, article "Governor Plans To Sue Times For Ad Libel"	1588	2147
93—The Alabama Journal issue of April 27, 1960, article "Times Will Probe Accuracy Of Stories"	1590	2149

	Original	Print
Defendants' Exhibits on motion for a new trial —Continued		
94—The Alabama Journal issue of May 7, 1960, article "The Times and Salisbury"	1591	2151
95—The Alabama Journal issue of May 6, 1960, article "B'ham Officials File Times Suits of $500,000 Each"	1593	2152
96—The Alabama Journal issue of May 12, 1960, article "Governor Prepares Suit Against N.Y. Times"	1594	2153
97—The Alabama Journal issue of May 13, 1960, article "Another Times Act"	1594	2154
98—The Alabama Journal issue of May 16, 1960, article "N.Y. Times Retracts Parts of Statement"	1595	2154
99—The Alabama Journal issue of May 17, 1960, article re: "Patterson Seeks Advice On Retraction"	1596	2155
100—The Alabama Journal issue of May 20, 1960, article "Times Challenges Libel Suit Here"	1597	2156
101—The Alabama Journal issue of May 27, 1960, article "New York Times Asks Dismissal Of Libel Actions"	1598	2158
102—The Alabama Journal issue of May 31, 1960, article "Patterson Has To Read The Times"	1599	2158
103—The Alabama Journal issue of May 31, 1960, article "3 Officials of Birmingham File Times Suit"	1599	2159
104—The Alabama Journal issue of May 30, 1960, article "Patterson Files Suit: Claims Libel of Million"	1600	2160
105—The Alabama Journal issue of June 30, 1960, article "Times Told To Show Records"	1602	2161
106—The Alabama Journal issue of June 24, 1960, article "Flagrant Errors About South"	1603	2163
107—The Alabama Journal issue of June 2, 1960, article "Alabama! Wherefore Art Thou?"	1604	2164

	Original	Print
Defendants' Exhibits on motion for a new trial —Continued		
108—The Alabama Journal issue of June 8, 1960, article "City Fathers Seeking Back Issues of Times"	1605	2165
109—The Alabama Journal issue of June 14, 1960, article "Times Requests Libel Dismissal In Jefferson"	1607	2166
110—The Alabama Journal issue of June 16, 1960, article "King Ad Netted About $7,000"	1607	2167
111—The Alabama Journal issue of June 24, 1960, article "'Time' Put Vandy in Alabama"	1608	2167
112—The Alabama Journal issue of June 1, 1960, article "Justice In Alabama"	1608	2168
113—The Alabama Journal issue of July 20, 1960, article "Birmingham Officer Sues N.Y. Times"	1609	2168
114—The Alabama Journal issue of July 25, 1960, article "State Has No Jurisdiction In Libel Suit, 'Times' Says"	1609	2169
115—The Alabama Journal issue of July 26, 1960, article "200 Times Stories About Alabama Put Into Evidence In Court" By Judith Rushin	1611	2170
116—The Alabama Journal issue of July 27, 1960, article "Times Hearing On Libel Suit In Third Day"	1612	2172
117—The Alabama Journal issue of July 28, 1960, article "Important Precedent At Stake In 'Times' Case Before Jones" By Ray Jenkins, Journal City Editor	1614	2173
118—The Alabama Journal issue of August 1, 1960, article "Jones Hears Arguments In N.Y. Times Suit"	1616	2176
119—The Alabama Journal issue of July 27, 1960, article "Tempers Flare At 'Times' Hearing" By Judith Rushin, Journal Staff Writer	1618	2178
120—The Alabama Journal issue of August 6, 1960, article "N.Y. Times Can Be Sued By Alabama" By Ray Jenkins, Journal City Editor	1619	2179

	Original	Print
Defendants' Exhibits on motion for a new trial —Continued		
121—The Alabama Journal issue of August 25, 1960, article "'Times' Writer Called To Testify At Bessemer"	1621	2182
122—The Alabama Journal issue of August 8, 1960, article "Where The Damage Is Done"	1622	2182
123—The Alabama Journal article, "Times Asks Dismissal of B'ham Suits"	1623	2183
124—The Alabama Journal issue of September 5, 1960, article, "Some Is Unfit"	1624	2184
125—The Alabama Journal issue of September 3, 1960, article "Rowdy South"	1624	2184
126—The Alabama Journal issue of September 2, 1960, article "U.S. Court Rules Times Suits Can Be Tried In State Courts"	1625	2185
127—The Alabama Journal issue of September 3, 1960, article "State Can Try N.Y. Times Suits"	1626	2186
128—The Alabama Journal issue of September 2, 1960, article "Cleric Decides To Testify On Race Relations"	1627	2187
129—The Alabama Journal issue of September 6, 1960, article "Rev. Hughes Reappears Before Jury"	1629	2188
130—The Alabama Journal issue of September 3, 1960, article "Cleric Appeals To Hugo Black"	1629	2189
131—The Alabama Journal issue of September 6, 1960, article "Jailed Minister Seeking Freedom: Jury Back Today"	1630	2190
132—The Alabama Journal issue of September 10, 1960, article "Methodists Send Hughes To Africa"	1632	2192
133—The Alabama Journal issue of September 9, 1960, article "N.Y. Times To Appeal Ruling On State Suits"	1633	2193
134—The Alabama Journal issue of September 8, 1960, article "'Deep Trouble' Seen For Demos In South"	1634	2194

	Original	Print
Defendants' Exhibits on motion for a new trial —Continued		
135—The Alabama Journal issue of September 7, 1960, article "Salisbury Is Indicted For Times Articles"	1635	2195
136—The Alabama Journal issue of September 21, 1960, article "Times Loses Bid To Delay Libel Suit" By Judith Rushin	1636	2197
137—The Alabama Journal issue of September 27, 1960, article "'Times' Ruling Appeal Slated"	1638	2198
138—The Alabama Journal issue of October 29, 1960, article "Times Loses Attempt To Throw Out Suit" By Judith Rushin	1638	2199
139—The Alabama Journal issue of October 11, 1960, article "Libel Suits"	1640	2200
140—The Alabama Journal issue of October 28, 1960, article "City's Libel Claims Attacked By Times" By Judith Rushin	1640	2200
141—The Alabama Journal issue of October 31, 1960, article "Times Libel Trial Begins Tuesday"	1642	2202
142—The Alabama Journal issue of November 2, 1960, article "L. B. Sullivan Testifies In Times Suit" By Judith Rushin	1643	2203
143—The Alabama Journal issue of November 3, 1960, article "Opposing Sides Give Final Arguments In Times Libel Suit" By Judith Rushin	1648	2208
144—The Alabama Journal issue of December 14, 1960, article "Jan. 14 Hearing Set For New Trial Bid"	1651	2212
145—The Alabama Journal issue of February 1, 1961, article "Courtroom Segregated In Times Suit" By Judith Rushin	1652	2213
146—The Alabama Journal issue of January 13, 1961, article "Arguments In Times Case Postponed"	1655	2216
147—The Alabama Journal issue of January 18, 1960, article "Judge Denies Another Trial To 4 Negroes"	1656	2217

	Original	Print
Defendants' Exhibits on motion for a new trial —Continued		
148—The Alabama Journal issue of January 31, 1961, article "Negroes Integrate Circuit Courtroom" By Judith Rushin	1657	2218
149—The Alabama Journal issue of January 30, 1961, article "Delay Is Denied In Times Trial" By Judith Rushin	1660	2221
150—The Alabama Journal issue of February 9, 1961, article "Times Libel Suit Looms By Sellers"	1662	2224
151—The Alabama Journal issue of February 4, 1961, article "Negroes Ask Out of $1 Million Bond"	1664	2225
152—The Alabama Journal issue of February 6, 1961, article "Orders To Seize Property Issued"	1666	2228
153—The Alabama Journal issue of February 11, 1961, article "Right Of Notification Given Lawyer In N.Y. Times Case"	1667	2229
154—The Alabama Journal issue of February 13, 1961, article "Cleric's Car To Be Sold At Auction"	1668	2230
155—The Alabama Journal issue of February 23, 1961, article "4 Negroes File Suit"	1669	2231
156—The Alabama Journal issue of November 1, 1960, article "Jurors Selected For Times Suit" By Judith Rushin, Journal Staff Writer	1671	2232
157—The Alabama Journal issue of November 2, 1960, article "L. B. Sullivan Testifies In Times Suit" By Judith Rushin, Journal Staff Writer	1673	2234
158—The Alabama Journal issue of November 4, 1960, article "Must Stick To The Truth"	1679	2240
159—Clerk's note re: One Roll of Film taken in the Courtroom during the progress of the trial and which was later shown over television station W.C.O.V. in Montgomery, Ala.	1681	2242
160—Montgomery, Alabama Television Station, W.C.O.V., Television Script of November 3, 1960 giving information about the trial	1681	2242
Reporter's and clerks' certificates to exhibits (omitted in printing)	1682a	2243

[fol. 1]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

Organization of Court

The State of Alabama
Montgomery County

At a regular term of the Circuit Court of Montgomery County, at which the officers authorized by law to hold or serve such Court were serving, the following proceedings were had in the cause styled L. B. Sullivan vs. The New York Times Co., a Corp., Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr. and J. E. Lowery.

[fol. 2]

In the Circuit Court of Montgomery County, Alabama

No. 27416

L. B. Sullivan,

vs.

The New York Times Co., a Corp., Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr., and J. E. Lowery.

Summons and Complaint—April 19, 1960

The State of Alabama
Montgomery County

To Any Sheriff of the State of Alabama—Greeting:

You are hereby commanded to summon The New York Times Company, a Corporation, Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr., and J. E. Lowery to appear before the Circuit Court of Montgomery County, in and for said County, at the place of holding the same, within thirty days from the service of this summons and complaint, then and there to demur or plead to the com-

plaint of L. B. Sullivan. And you are hereby commanded to execute this process instanter and make return as required by law.

Witness my hand this 19 day of April, 1960.

John R. Matthews, Clerk.

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

[Title omitted]

COMPLAINT—Filed April 19, 1960

Count I

Plaintiff claims of the defendants the sum of Five Hundred Thousand Dollars ($500,000.00) as damages, for that plaintiff avers that defendants falsely and maliciously published in the City of New York, State of New York, and in the City of Montgomery, Alabama, and throughout the State of Alabama of and concerning the plaintiff, in a publication entitled The New York Times, in the issue of March 29, 1960, on page 25, in an advertisement entitled, "Heed Their Rising Voices" (a copy of said advertisement being attached hereto and made a part hereof as Exhibit "A"), false and defamatory matter of charges reflecting upon the conduct of the plaintiff as a member of the Board of Commissioners of the City of Montgomery, Alabama, and imputing improper conduct to him, and subjecting him to public contempt, ridicule and shame, and prejudicing the [fol. 3] plaintiff in his office, profession, trade, or business, with an intent to defame the plaintiff, and particularly the following false and defamatory matter therein contained:

"In Montgomery, Alabama, after students sang, 'My Country, 'Tis of Thee' on the Capitol steps, their Leaders were expelled from school, and truckloads of police armed with shotguns and tear gas ringed the Alabama State College campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission."

"Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for 'speeding,' 'loitering' and similar 'offenses.' And now they have charged him with 'perjury'—a *felony* under which they could imprison him for *ten years.*"

And plaintiff further avers that more than five days before the bringing of this action plaintiff made a written demand for a full and fair public retraction of the aforesaid false and defamatory matter or charges upon defendants and each of them; and defendants, and each of them, have failed or refused to publish a full and fair retraction of such charges or matter in as prominent and public a place or manner as the aforesaid charges or matter occupied as aforesaid;

And plaintiff further avers that he has suffered damage, and embarrassment to his character and reputation, personally and as a public official of the City of Montgomery, Alabama; that he has been subjected to public ridicule and shame; that he has been injured and damaged in the lawful pursuit of his office, profession, trade or business, as a proximate result of the aforesaid false and defamatory publication by the defendants; and plaintiff further claims punitive damages; hence this suit.

Count II

Plaintiff claims of the defendants the sum of Five Hundred Thousand Dollars ($500,000.00) as damages, for that plaintiff avers that defendants falsely and maliciously published in the City of New York, State of New York, and in the City of Montgomery, Alabama, and throughout the State of Alabama, of and concerning the plaintiff, in a publication entitled The New York Times, in the issue of March 29, 1960, on page 25, in an advertisement entitled, "Heed Their Rising Voices" (a copy of said advertisement being attached hereto and made a part hereof as Exhibit "A"),

false and defamatory matter or charges reflecting upon the conduct of the plaintiff as a member of the Board of Commissioners of the City of Montgomery, Alabama, and imputing improper conduct to him, and subjecting him to public contempt, ridicule, and shame, and prejudicing the plaintiff in his office, profession, trade, or business, and [fol. 4] particularly the following false and defamatory matter therein contained:

> "In Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission."

> "Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for 'speeding,' 'loitering', and similar 'offences.' And now they have charged him with 'perjury'—a *felony* under which they could imprison him for *ten years*."

And plaintiff further avers that more than five days before the bringing of this action plaintiff made a written demand for a full and fair public retraction of the aforesaid false and defamatory matter or charges upon defendants and each of them; and defendants, and each of them, have failed or refused to publish a full and fair retraction of such charges or matter in as prominent and public a place or manner as the aforesaid charges or matter occupied as aforesaid;

And plaintiff further avers that he has suffered damage and embarrassment to his character and reputation, personally and as a public official of the City of Montgomery, Alabama; that he has been subjected to public ridicule and shame; that he has been injured and damaged in the lawful

pursuit of his office, profession, trade, or business, as a proximate result of the aforesaid false and defamatory publication by the defendants; and plaintiff further claims punitive damages, hence this suit.

Scott, Whitesell & Scott, By: Calvin Whitesell;
Steiner, Crum and Baker, By: M. R. Nachman, Jr.;
Attorneys for Plaintiff.

Plaintiff demands trial by jury in this cause.

Steiner, Crum & Baker, By: M. R. Nachman, Jr.,
Attorneys for Plaintiff.

State of Alabama
Montgomery County

Before me, Bernice S. Osgoode, a Notary Public in and for said County, in said State, personally appeared M. R. Nachman, Jr., who is known to me, and who, being first duly [fol. 5] sworn, deposes and says as follows:

That defendant The New York Times Company, a corporation, is a non-resident of the State of Alabama; that it is not qualified under the Constitution and laws of the State of Alabama as to doing business in the State of Alabama; that it has actually done and is now doing business or performing work or services in the State of Alabama; that this cause of action has arisen out of the doing of such business or as an incident thereof by the said defendant in the State of Alabama, and that by the doing of such business or the performing of such work or services this defendant, in accordance with the Constitution and laws of the State of Alabama, is deemed to have appointed the Secretary of State of Alabama, or her successor or successors in office, to be the true and lawful attorney or agent of this nonresident defendant, upon whom process may be served in this action which has accrued from the performing of such work or services, or as an incident thereof, by this nonresident defendant, acting through its agents, servants, or employees.

And affiant further avers that process should be served upon this defendant, to-wit, The New York Times Company,

in the manner prescribed by the laws of Alabama, and particularly in the manner prescribed by Title 7, Sec. 199 (1), Code of Alabama 1940 as amended.

Affiant further avers that the residence and the last known address of this defendant is as follows: The New York Times Company, Times Building, 229 West 43d Street, New York, New York.

M. R. Nachman, Jr.

Sworn to and subscribed before me, this the 18th day of April, 1960, as witness my hand and official seal.

Bernice S. Osgoode, Notary Public, Montgomery County, Alabama.

Filed in office this 19 day of April, 1960.

John R. Matthews, Clerk.

[fol. 6]

EXHIBIT "A" TO COMPLAINT

HEED THEIR RISING VOICES

> "The growing movement of peaceful mass demonstrations by Negroes is something new in the South, something understandable. . . . Let Congress heed their rising voices, for they will be heard."
>
> —New York Times Editorial
> Saturday, March 19, 1960

As the whole world knows by now, thousands of Southern Negro students are engaged in widespread non-violent demonstrations in positive affirmation of the right to live in human dignity as guaranteed by the U. S. Constitution and the Bill of Rights. In their efforts to uphold these guarantees, they are being met by an unprecedented wave of terror by those who would deny and negate that document which the whole world looks upon as setting the pattern for modern freedom. . . .

In Orangeburg, South Carolina, when 400 students peacefully sought to buy doughnuts and coffee at lunch counters

in the business district, they were forcibly ejected, tear-gassed, soaked to the skin in freezing weather with fire hoses, arrested en masse and herded into an open barbed-wire stockade to stand for hours in the bitter cold.

In Montgomery, Alabama, after students sang "My Country, 'Tis of Thee" on the State Capitol steps, their leaders were expelled from school, and truck-loads of police armed with shotguns and tear-gas ringed the Alabama State College Campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission.

In Tallahassee, Atlanta, Nashville, Savannah, Greensboro, Memphis, Richmond, Charlotte, and a host of other cities in the South, young American teen-agers, in face of the entire weight of official state apparatus and police power, have boldly stepped forth as protagonists of democracy. Their courage and amazing restraint have inspired millions and given a new dignity to the cause of freedom.

Small wonder that the Southern violators of the Constitution fear this new, non-violent brand of freedom fighter . . . even as they fear the upswelling right-to-vote movement. Small wonder that they are determined to destroy the one man who, more than any other, symbolises the new spirit now sweeping the South, the Rev. Dr. Martin Luther King, Jr., world-famous leader of the Montgomery Bus Protest. For it is his doctrine of non-violence which has inspired and guided the students in their widening wave of sit-ins; and it this same Dr. King who founded and is president of the Southern Christian Leadership Conference [fol. 7] —the organization which is spearheading the surging right-to-vote movement. Under Dr. King's direction the Leadership Conference conducts Student Workshops and Seminars in the philosophy and technique of non-violent resistance.

Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for "speeding", "loitering", and similar

"offenses." And now they have charged him with "perjury" —a *felony* under which they could imprison him for *ten years.* Obviously, their real purpose is to remove him physically as the leader to whom the students and millions of others—look for guidance and support, and thereby to intimidate all leaders who may rise in the South. Their strategy is to behead this affirmative movement, and thus to demoralize Negro Americans and weaken their will to struggle. The defense of Martin Luther King, spiritual leader of the student sit-in movement, clearly, therefore, is an integral part of the total struggle for freedom in the South.

Decent-minded Americans cannot help but applaud the creative daring of the students and the quiet heroism of Dr. King. But this is one of those moments in the stormy history of Freedom when men and women of good will must do more than applaud the rising-to-glory of others. The America whose good name hangs in the balance before a watchful world, the America whose heritage of Liberty these Southern Upholders of the Constitution are defending, is our America as well as theirs . . .

We must heed their rising voices—yes—but we must add our own.

We must extend ourselves above and beyond moral support and render the material help so urgently needed by those who are taking the risks, facing jail, and even death in a glorious re-affirmation of our Constitution and its Bill of Rights.

We urge you to join hands with our fellow Americans in the South by supporting, with your dollars, this combined appeal for all three needs—the defense of Martin Luther King—the support of the embattled students,—and the struggle for the right-to-vote.

YOUR HELP IS URGENTLY NEEDED . . . NOW ! !

Stella Adler
Raymond Pace Alexander
Harry Van Arsdale
Harry Belafonte
Julie Belafonte
Dr. Algernon Black
Marc Blitztein
William Branch
Marlon Brando
Mrs. Ralph Bunche

Diahann Carroll
Dr. Alan Knight Chalmers
Richard Coe
Nat King Cole
Cheryl Crawford
Dorothy Dandridge
[fol. 8].
Anthony Franciosa
Lorraine Hansbury
Rev. Donald Harrington
Nat Hentoff
James Hicks
Mary Hinkson
Van Heflin
Langston Hughes
Morris Lushewitz
Mahalia Jackson
Mordecai Johnson
John Killens
Eartha Kitt
Rabbi Edward Klein
Hope Lange
John Lewis
Viveca Lindfors
Carl Murphy
Don Murray
John Murray
A. J. Muste
Frederick O'Neal

Ossie Davis
Sammy Davis, Jr.
Ruby Dee
Dr. Phillip Elliott
Dr. Harry Emerson Fosdick

L. Joseph Overton
Clarence Pickett
Shad Polier
Sidney Poitier
A. Philip Randolph
John Raitt
Elmer Rice
Jackie Robinson
Mrs. Eleanor Roosevelt
Bayard Rustin
Robert Ryan
Maureen Stapleton
Frank Silvera
Hope Stevens
George Tabori
Rev. Gardner C. Taylor
Norman Thomas
Kenneth Tynan
Charles White
Shelley Winters
Max Youngstein

We in the south who are struggling daily for dignity and freedom warmly endorse this appeal

Rev. Ralph D. Abernathy
(Montgomery, Ala.)

Rev. Fred L. Shuttlesworth
(Birmingham, Ala.)

Rev. Kelley Miller Smith
(Nashville, Tenn.)

Rev. W. A. Dennis
(Chattanooga, Tenn.)

Rev. C. K. Steele
(Tallahassee, Fla.)

Rev. Matthew D. McCollom
(Orangeburg, S. C.)

Rev. William Holmes Borders
(Atlanta, Ga.)

Rev. Douglas Moore
(Durham, N.C.)

Rev. Wyatt Tee Walker
(Petersburg, Va.)

Rev. Walter L. Hamilton
(Norfolk, Va.)

I. S. Levy
(Columbia, S.C.)

Rev. Martin Luther King
(Atlanta, Ga.)

Rev. Henry C. Bunton
(Memphis, Tenn.)

Rev. A. L. Davis
(New Orleans, La.)

Rev. J. E. Lowery
(Mobile, Ala.)

Rev. S. S. Seay, Sr.
(Montgomery, Ala.)

Mrs. Katie E. Whickham
(New Orleans, La.)

Committee to defend Martin Luther King and the Struggle for Freedom in The South

312 West 125th Street,
New York 27, N. Y.
University 6-1700

I am enclosing my contribution of $..... for the work of the Committee.

Name .....
Please Print

Address .....

City .....

Zone ..... State .....

.....
I want to help

.....

.....
Please send further information.

.....

Please make checks payable to: "Committee to Defend Martin Luther King"

Rev. T. J. Jemison
(Baton Rouge, La.)

Rev. Samuel W. Williams
(Atlanta, Ga.)

Rev. W. H. Hall
(Hattiesburg, Miss.)

COMMITTEE TO DEFEND MARTIN LUTHER KING AND THE STRUGGLE FOR FREEDOM IN THE SOUTH

312 West 125th Street, New York 27, N. Y.,
UNiversity 6-1700

Chairmen: A. Philip Randolph, Dr. Gardner C. Taylor; Chairmen of Cultural Division:

Harry Belafonte, Sidney Poitier, Shelley Winters; Treas-
[fol. 9] urer; Nat King Cole, Executive Director: Bayard Rustin, Chairmen of Church Division: Father George B. Ford, Rev. Harry Emerson Fosdick, Rev. Thomas Kilgore, Jr., Rabbi Edward E. Klein; Chairman of Labor Division: Morris Iushewitz.

. . . . . ;

Filed in office this 19 day of April, 1960.

JOHN R. MATTHEWS, Clerk.

Executed by serving three copies of the within Summons and Complaint on Betty Frink as Secretary of State of Ala., for Deft. New York Times, 4-21-60.

Also a copy on Don McKee, as Agent 4-21-60 for the New York Times and further executed by serving a copy on defendant Ralph D. Abernathy, 4-28-60 Also on S. S. Seay, Sr., 4-21-60.

M. S. BUTLER, SHERIFF

By: Romeo & Mathis, D. S.

Executed this 16 day of May, 1960 by serving a copy of the within on J. E. Lowery.

RAY D. BRIDGES, Sheriff

By: J. Payne, D.S.

Executed this the Apr 22 1960 day of —— 195— by leaving a copy of the within with Fred L. Shuttlesworth.

HOLT A. McDOWELL, Sheriff
Jefferson County, Alabama

By: Thomas Hoffey, D. S.

CERTIFICATE OF SERVICE

May 24, 1960

L. B. SULLIVAN, Plaintiff

vs

IN THE CIRCUIT COURT OF MONTGOMERY, ALABAMA

CASE No. 578

THE NEW YORK TIMES COMPANY, a Corporation, et al, Defendants

STATE OF ALABAMA
MONTGOMERY COUNTY

Before me, Nancy H. Turner, a Notary Public in and for said State-at-Large, personally appeared Bettye Frink, Secretary of State of the State of Alabama, who is known to me and who being duly sworn, deposes and says that in her official capacity as Secretary of State of the State of Alabama, she, on the 21 day of April, 1960 sent by registered mail in an envelope addressed as follows:

[fol. 10]

"The New York Times Company
Times Building
229 West 43d Street
New York, New York"

"Registered Mail—
Return Receipt Requested

bearing sufficient and proper prepaid postage, a notice bearing her signature and the Great Seal of the State of Alabama in words and figures as follows:

"The New York Times Company
Times Building
229 West 43d Street
New York, New York

You will take notice that on April 21, 1960 the Sheriff of Montgomery County, Alabama, served upon me, in my official capacity, Summons and Complaint and Affidavit in a case entitled: L. B. SULLIVAN, Plaintiff, vs THE NEW YORK

TIMES COMPANY, a Corporation, et al, Defendants in the CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA
CASE No. 578

a true copy of which Summons and Complaint and Affidavit are attached hereto and the said service upon me as Secretary of State of the State of Alabama has the force and effect of personal service upon you, said service being under provisions of Title 7, Section 199 (1) of the 1940 Code of Alabama and Supplement thereto.

WITNESS MY HAND and the Great Seal of the State of Alabama this the 21 day of April, 1960

(Signed) BETTYE FRINK
Bettye Frink, Secretary of State

Enclosures (2)

Affiant further says that the notice above set out which was so mailed in the envelope addressed as above set forth had attached to it a true copy of the Summons and Complaint and Affidavit in the above-styled cause.

Affiant further says that on May 16, 1960 she received the "Return Card" showing "RECEIPT" by the designated addressee of the aforementioned matter at New York, N. Y. Times on Apr. 23, 1960 /Square Sta. 95 Rec'd. 1960.

BETTYE FRINK
Affiant, Bettye Frink,
Secretary of State

Sworn to and subscribed before me, this the 24 day of May, 1960.

NANCY H. TURNER
Notary Public, State-at-Large
My Commission expires: 10/17/62

Enclosures—"Return Receipt" and
Copy of Process

cc: Messrs. Steiner, Crum & Baker
Attorneys at Law
First National Bank Building
Montgomery, Alabama

[fol. 11]

RETURN RECEIPT CARD

L. B. SULLIVAN vs THE NEW YORK TIMES COMPANY, a Corporation et al

#1—INSTRUCTIONS TO DELIVERING EMPLOYEE

___

Deliver ONLY Addressee

___

___

Show address where delivered

___

(Additional Charges required for these services)

NEW YORK 36 N. Y.
C 96
12:30 PM

TIMES SQUARE STATION

RETURN RECEIPT

Received the numbered article described on other side

SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in)

N. Y. TIMES

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

G. ALFION

Date Delivered

Apr. 23, 1960

Address Where Delivered (only if requested in item #1)

POST OFFICE DEPARTMENT
Official Business

PENALTY FOR PRIVATE USE TO AVOID
Payment of Postage $300

Received May 16, 1960

——Return to:

Secretary of State

Secretary of State Montgomery, Alabama

Postmark of delivering office

New York, N. Y.,
Times Square Station No. 95
1960
May 11—11 AM

Registered No.
54307

[fol. 12]

In the Circuit Court of Montgomery County, Alabama

No. 27416

[Title omitted]

Demurrer of S. S. Seay, Sr.—Filed May 20, 1960

Now comes S. S. Seay, Sr., one of the defendants in the above entitled cause and demurs to the Complaint filed in the above entitled cause, and separately and severally demurs to each count thereof, and as grounds of demurrer assigns the following separately and severally:

1. That it does not state a cause of action.

2. That no facts alleged upon which relief sought can be granted.

3. That there is a misjoinder of party defendants.

4. That there is a misjoinder of causes of actions.

5. No facts are alleged to show that this defendant published in the City of New York, State of New York, or any place, the advertisement referred to in said Complaint.

6. No facts are alleged to show that this defendant caused to be published in the City of New York, State of New York, or any other place, the advertisement referred to in said Complaint.

7. For ought that appears from the Complaint, this defendant did not publish or cause to be published in the City of New York, State of New York, or any other place, the advertisement referred to in said Complaint.

8. There is no allegation in said Complaint that this individual defendant published or caused to be published the advertisement referred to and attached to the Complaint.

9. For that it affirmatively appears from said Complaint and from Exhibit "A" attached thereto, that this defendant in fact did not publish or cause to be published the advertisement referred to in said Complaint.

10. The allegations that this defendant falsely and maliciously published in the City of New York, State of New York, and in the City of Montgomery, Alabama, of and concerning the plaintiff, in a publication entitled "The New York Times", in the issue of March 29, 1960, on page 25 in an advertisement, "Heed Their Rising Voices" is a conclusion of the pleader with no facts alleged in support thereof.

11. For that no facts are alleged to show that this defendant did any act or acts which could be reasonable interpreted as imputing improper conduct to the plaintiff and [fol. 13] subjecting plaintiff to public contempt, ridicule and shame.

12. For that the allegation that this defendant did any act or acts which would be reasonably interpreted as imputing improper conduct to the plaintiff is a conclusion of the pleader and unsupported by any facts.

13. That said Complaint and no count thereof connects the plaintiff in any way with the alleged libelous matter stated in the Complaint.

14. That the said alleged libelous matter does not designate by innuendo or otherwise that the matter complained of applied to the plaintiff in this cause.

15. That the allegations that this defendant published in the City of New York, State of New York, and in the City

of Montgomery, Alabama and throughout the State of Alabama, false and defamatory matters reflecting upon the conduct of the plaintiff as a member of the Board of Commissioners of the City of Montgomery, Alabama is a conclusion of the pleader and no facts are alleged to substantiate said allegations.

16. That there is no causal connection between this defendant and the alleged libelous matter stated in the Complaint.

17. That there is no causal connection between this defendant, the alleged libelous matter stated in the Complaint and the plaintiff.

18. That the allegations of the Complaint and each count thereof are the mere conclusion of the pleader without facts alleged in support thereof.

19. That it affirmatively appears from the allegations of the Complaint that this defendant had no connection with the publication of the alleged libelous matter.

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr., Attorneys for the Defendant.

Certificate of Service (omitted in printing).

[File endorsement omitted]

[fol. 14]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

No. 27416

[Title omitted]

DEMURRER OF FRED L. SHUTTLESWORTH —Filed May 20, 1960

Now comes Fred L. Shuttlesworth, one of the defendants in the above entitled cause and demurs to the Complaint filed in the above entitled cause, and separately and severally demurs to each count thereof, and as grounds of demurrer assigns the following separately and severally:

1. That it does not state a cause of action.

2. That no facts alleged upon which relief sought can be granted.

3. That there is a misjoinder of party defendants.

4. That there is a misjoinder of causes of actions.

5. No facts are alleged to show that this defendant published in the City of New York, State of New York, or any place, the advertisement referred to in said Complaint.

6. No facts are alleged to show that this defendant caused to be published in the City of New York, State of New York, or any other place, the advertisement referred to in said Complaint.

7. For ought that appears from the Complaint, this defendant did not publish or cause to be published in the City of New York, State of New York, or any other place, the advertisement referred to in said Complaint.

8. There is no allegation in said Complaint that this individual defendant published or caused to be published the advertisement referred to and attached to the Complaint.

9. For that it affirmatively appears from said Complaint and from Exhibit "A" attached thereto, that this defendant in fact did not publish or cause to be published the advertisement referred to in said Complaint.

10. The allegations that this defendant falsely and maliciously published in the City of New York, State of New York, and in the City of Montgomery, Alabama, of and concerning the plaintiff, in a publication entitled "The New York Times", in the issue of March 29, 1960, on page 25, in an advertisement entitled, "Heed Their Rising Voices" is a conclusion of the pleader with no facts alleged in support thereof.

11. For that no facts are alleged to show that this defendant did any act or acts which could be reasonably interpreted as imputing improper conduct to the plaintiff and subjecting plaintiff to public contempt, ridicule and shame.

[fol. 15] 12. For that the allegation that this defendant did any act or acts which would be reasonable interpreted as imputing improper conduct to the plaintiff is a conclusion of the pleader and unsupported by any facts.

13. That said Complaint and no count thereof connects the plaintiff in any way with the alleged libelous matter stated in the Complaint.

14. That the said alleged libelous matter does not designate by innuendo or otherwise that the matter complained of applied to the plaintiff in this cause.

15. That the allegations that this defendant published in the City of New York, State of New York, and in the City of Montgomery, Alabama and throughout the State of Alabama, false and defamatory matters reflecting upon the conduct of the plaintiff as a member of the Board of Commissioners of the City of Montgomery, Alabama is a conclusion of the pleader and no facts are alleged to substantiate said allegations.

16. That there is no causal connection between this defendant and the alleged libelous matter stated in the Complaint.

17. That there is no causal connection between this defendant, the alleged libelous matter stated in the complaint and the plaintiff.

18. That the allegations of the Complaint and each count thereof are the mere conclusion of the pleader without facts alleged in support thereof.

19. That it affirmatively appears from the allegations of the Complaint that this defendant had no connection with the publication of the alleged libelous matter.

Respectfully Submitted,

Fred D. Gray, Solomon S. Seay, Jr., Attorneys for the Defendant.

Certificate of Service (omitted in printing).

[File endorsement omitted]

[fol. 16]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEMURRER OF RALPH D. ABERNATHY
—Filed May 22, 1960

Now comes Ralph D. Abernathy, one of the defendants in the above entitled cause and demurs to the Complaint filed in the above entitled cause, and separately and severally demurs to each count thereof, and as grounds of demurrer assigns the following separately and severally:

1. That it does not state a cause of action.

2. That no facts alleged upon which relief sought can be granted.

3. That there is a misjoinder of party defendants.

4. That there is a misjoinder of causes of actions.

5. No facts are alleged to show that this defendant published in the City of New York, State of New York, or any place, the advertisement referred to in said Complaint.

6. No facts are alleged to show that this defendant caused to be published in the City of New York, State of New York, or any other place, the advertisement referred to in said Complaint.

7. For ought that appears from the Complaint, this defendant did not publish or cause to be published in the City of New York, State of New York, or any other place, the advertisement referred to in said Complaint.

8. There is no allegation in said Complaint that this individual defendant published or caused to be published the advertisement referred to and attached to the Complaint.

9. For that it affirmatively appears from said Complaint and from Exhibit "A" attached thereto, that this defendant in fact did not publish or cause to be published the advertisement referred to in said Complaint.

10. The allegations that this defendant falsely and maliciously published in the City of New York, State of New

York, and in the City of Montgomery, Alabama, of and concerning the plaintiff, in a publication entitled "The New York Times", in the issue of March 29, 1960, on page 25, in an advertisement entitled, "Heed Their Rising Voices" is a conclusion of the pleader with no facts alleged in support thereof.

11. For that no facts are alleged to show that this defendant did any act or acts which could be reasonably interpreted as imputing improper conduct to the plaintiff and subjecting plaintiff to public contempt, ridicule and shame.

12. For that the allegation that this defendant did any act or acts which would be reasonably interpreted as imputing improper conduct to the plaintiff is a conclusion of the pleader and unsupported by any facts.

13. That said Complaint and no count thereof connects [fol. 17] the plaintiff in any way with the alleged libelous matter stated in the Complaint.

14. That the said alleged libelous matter does not designate by innuendo or otherwise that the matter complained of applied to the plaintiff in this cause.

15. That the allegations that this defendant published in the City of New York, State of New York, and in the City of Montgomery, Alabama, and throughout the State of Alabama, false and defamatory matters reflecting upon the conduct of the plaintiff as a member of the Board of Commissioners of the City of Montgomery, Alabama is a conclusion of the pleader and no facts are alleged to substantiate said allegations.

16. That there is no causal connection between this defendant and the alleged libelous matter stated in the Complaint.

17. That there is no causal connection between this defendant, the alleged libelous matter stated in the Complaint and the plaintiff.

18. That the allegations of the Complaint and each count thereof are the mere conclusion of the pleader without facts alleged in support thereof.

19. That it affirmatively appears from the allegations of the Complaint that this defendant had no connection with the publication of the alleged libelous matter.

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr., Attorneys for Defendant.

Certificate of Service (omitted in printing).

[File endorsement omitted]

[fol. 18]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEMURRER OF J. E. LOWERY—Filed June 15, 1960

Now comes J. E. Lowery, one of the defendants in the above entitled cause and demurs to the Complaint filed in the above entitled cause, and separately and severally demurs to each count thereof, and as grounds of demurrer assigns the following separately and severally:

1. That it does not state a cause of action.

2. That no facts alleged upon which relief sought can be granted.

3. That there is a misjoinder of party defendants.

4. That there is a misjoinder of causes of action.

5. No facts are alleged to show that this defendant published in the City of New York, State of New York, or any place, the advertisement referred to in said Complaint.

6. No facts are alleged to show that this defendant caused to be published in the City of New York, State of New York, or any other place, the advertisement referred to in said Complaint.

7. For ought that appears from the Complaint, this defendant did not publish or cause to be published in the City of New York, State of New York, or any other place, the advertisement referred to in said Complaint.

8. There is no allegation in said Complaint that this individual defendant published or caused to be published the advertisement referred to and attached to the Complaint.

9. For that it affirmatively appears from said Complaint and from Exhibit "A" attached thereto, that this defendant in fact did not publish or cause to be published the advertisement referred to in said Complaint.

10. The allegations that this defendant falsely and maliciously published in the City of New York, State of New York, and in the City of Montgomery, Alabama, of and concerning the plaintiff, in a publication entitled "The New York Times", in the issue of March 29, 1960, on page 25, in an advertisement entitled "Heed Their Rising Voices" is a conclusion of the pleader with no facts alleged in support thereof.

11. For that no facts are alleged to show that this defendant did any act or acts which could be reasonable interpreted as imputing improper conduct to the plaintiff and subjecting plaintiff to public contempt, ridicule and shame.

12. For that the allegation that this defendant did any act or acts which would be reasonably interpreted as imputing improper conduct to the plaintiff is a conclusion of the pleader and unsupported by any facts.

[fol. 19] 13. That said Complaint and no count thereof connects the plaintiff in any way with the alleged libelous matter stated in the Complaint.

14. That the said alleged libelous matter does not designate by innuendo or otherwise that the matter complained of applied to the plaintiff in this cause.

15. That the allegations that this defendant published in the City of New York, State of New York, and in the City of Montgomery, Alabama and throughout the State of Alabama, false and defamatory matters reflecting upon the conduct of the plaintiff as a member of the Board of Commissioners of the City of Montgomery, Alabama is a conclusion of the pleader and no facts are alleged to substantiate said allegations.

16. That there is no causal connection between this defendant and the alleged libelous matter stated in the Complaint.

17. That there is no causal connection between this defendant, the alleged libelous matter stated in the Complaint and the plaintiff.

18. That the allegations of the Complaint and each count thereof are the mere conclusions of the pleader without facts alleged in support thereof.

19. That it affirmatively appears from the allegations of the Complaint that this defendant had no connection with the publication of the alleged libelous matter.

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr., Attorneys for Defendant.

Vernon Z. Crawford

Certificate of Service (omitted in printing).

[File endorsement omitted]

[fol. 20]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

INTERROGATORIES TO DEFENDANT THE NEW YORK TIMES COMPANY—Filed June 16, 1960

Comes plaintiff L. B. Sullivan, and pursuant to the provisions of Title 7, pp. 477 et seq., Code of Alabama of 1940, propounds the following interrogatories to the defendant The New York Times Company.

1. Please state your correct corporate name and the name, address and official position of the person who is answering these interrogatories.

2. Please state all the details, facts, and circumstances under which the advertisement on which this suit is based came to be inserted in the New York Times in the issue of March 29, 1960, on pg. 25. In answering this question, please give the names, addresses, and official position of each and

every person who had any connection with the handling of the advertisement, and state exactly and in detail what was done by each.

3. Please state exactly and in detail what investigation was made by any person for or on behalf of the New York Times to determine the correctness of the statements contained in said advertisement, prior to its publication. In answering this question, please give the name and address of every person who made any investigation for or on behalf of the New York Times, and state his connection with the New York Times, and state exactly what was done by each such person. Attach to the answers to these interrogatories copies of any written statement which any such person may have made to the New York Times regarding the results of such an investigation.

4. Please state whether or not the New York Times, prior to the publication of the advertisement involved in this suit, carried any news stories in its paper, or received in its files any news coverage or reports from its reporters, news services, or other news gathering media concerning any of the events or occurrences referred to in said advertisement, and if you answer affirmatively, please attach to your answers to this interrogatory the original or a true and correct copy of each and every said news story, news account, report, or communication appearing in the New York Times or received by the New York Times or made known to the New York Times prior to the publication of said advertisement on March 29, 1960.

5. Please attach to your answer to this interrogatory the original or a true and correct photostatic copy of the documents or document forming the basis of the format from which this advertisement was composed and on which it was based. Please attach to your answer to this interrogatory every document, writing, or authorization from any of the signers of the advertisement authorizing the New York Times to publish their names in said advertisement.

[fol. 21] 6. Did the New York Times receive from the plaintiff a demand for retraction, by letter dated April 8, 1960? If you answer affirmatively, please attach the origi-

nal or a true and correct copy of said demand for retraction.

7. Did the New York Times or its attorneys make any reply to said demand for retraction from the plaintiff dated April 8, 1960? If you answer affirmatively, please attach a true and correct copy of said reply.

8. After receipt of said demand for retraction from the plaintiff, dated April 8, 1960, did the New York Times make any investigation of the correctness of the statements contained in said advertisement? If you answer affirmatively, please state the name of the person or persons making the investigation, the connection of each with the New York Times, the results of said investigation, and attach to your answers to this interrogatory the originals or true and correct copies of any and all reports, communications, advice, or other writings, informing or apprising you of the results of said investigation.

9. If you have answered that any investigation was made, please advise whether you received any report, verbally or by telephone or otherwise than in writing, and if you answer affirmatively, please state the substance of said verbal or telephonic reports, including the names of the persons who made the report and their connection with the New York Times.

10. Did you in response to plaintiff's demand dated April 8, 1960, publish a retraction in your newspaper? If you answer affirmatively, please attach the original or a true and correct copy of said retraction.

11. Did you in response to a demand from any person other than the plaintiff publish a retraction or apology, or anything of a similar nature which had reference to the advertisement involved in this suit? If you answer affirmatively, please attach the original or a true and correct copy of said retraction and state the circumstances under which it was made. Please explain why said retraction was made but no retraction was made on the demand of the plaintiff.

12. Is the following matter contained in the advertisement made the basis of this suit, true:

"In Montgomery, Alabama, after students sang, 'My Country, 'Tis of Thee' on the Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear gas ringed the Alabama State College campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission."

"Again and again the Southern violators have answered [fol. 22] Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for 'speeding,' 'loitering' and similar 'offenses.' And now they have charged him with 'perjury'—a *felony* under which they could imprison him for *ten years.*"

Please state each and every fact, statement, or occurrence contained in the foregoing quotation which you say is true; and which are not true. Please state further and fully every source of information upon which you rely for your contention, if you contend that any of the foregoing facts, statements, or occurrences are true.

13. Please state which of the following departments or offices of the New York Times read, passed upon, or considered in any way the advertisement which is the basis of this suit and which appeared in the March 29, 1960, issue of the New York Times: publication office staff; advertising censorship department; advertising department. Give the names and addresses of the persons in any of these departments or in any other department or office of the New York Times who considered, passed upon, or read this advertisement.

14. Please attach as an answer to this interrogatory any written statement of principles or policies of the New York Times in regard to advertising censorship, and specifically attach a true and correct copy of the "New York Times Advertising Index Expurgatory."

15. If you maintain that the advertisement which is the basis of this suit was "proffered to the Times by responsible persons," give the name and address of each such person.

16. Please state the number of issues of the March 29, 1960 edition of the New York Times which were sold and distributed and give the geographical extent of such sale or distribution. Did the New York Times initiate, by mailing or otherwise arranging for shipment, the distribution of issues of the March 29, 1960, New York Times in the City of Montgomery and State of Alabama?

17. Has the New York Times accepted for publication any other advertisements from the "Committee to Defend Martin Luther King and the Struggle for Freedom in the South," other than the advertisement which appeared in the March 29, 1960, issue of the New York Times? If so, attach to your answer to this interrogatory such issue or issues of the New York Times.

18. Give all of the facts in your possession which tend in any manner to substantiate the matter quoted in Interrogatory No. 12, and include with this answer the names of persons, and if documentary substantiation is claimed, true [fol. 23] and correct copies of such documents.

19. State your gross income during the year 1959 and for the first six months of 1960, and your net earnings for the same period. State your assets, liabilities, and net worth for the year 1959.

Steiner, Crum & Baker, By: M. R. Nachman, Jr.
Scott, Whitesell & Scott, By: Calvin M. Whitesell,
Attorneys for Plaintiff.

State of Alabama
Montgomery County

Before me, Bernice S. Osgoode, a Notary Public in and for said County, in said State, personally appeared M. R. Nachman, Jr., who is known to me, who being by me first duly sworn upon oath deposes and says that he is one of the attorneys for the plaintiff in the above entitled cause, and as such is authorized to make this affidavit; that the answers

of the defendant, The New York Times Company, a corporation, to the foregoing interrogatories will be material testimony for the plaintiff in the trial of this case.

M. R. Nachman, Jr.

Sworn to and subscribed before me on this the 16th day of June, 1960, as witness my hand and official seal.

Bernice S. Osgoode, Notary Public, Montgomery County, Alabama.

Executed by serving a copy of the within interrogatories on Beddow, Embry and Beddow, as attorneys of record for The New York Times Co. by leaving a copy with Eric Embry, atty. agt. this June 21, 1960.

Holt A. McDowell, Sheriff, Jefferson Co.

I hereby certify that a copy of the within interrogatories were mailed by Registered Mail, Return Receipt Requested, to the New York Times Co., Inc., a corp., New York, New York, on this the 17th day of June, 1960.

John R. Matthews, Clerk.

[File endorsement omitted]

[fol. 24]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

MOTION TO PRODUCE—Filed May 31, 1960

Comes the plaintiff in the above entitled cause and moves this Court for an order requiring the defendant The New York Times Company, a corporation (hereinafter referred to in this motion as "the Times",) to produce the following books, documents, and writings in its possession, custody, control or power, which contain evidence pertinent to the issues in the above styled cause, and which more specifically relate to questions raised and to be presented to this Court by the said defendant's motion to quash, and plaintiff further moves this Court for an order that the same be produced in the office of the Clerk of this Court by the 20th day of June, 1960:

(1) All issues of the New York Times for the following dates: Feb. 11, 12, 17, 18, 22, 23, 25, 26, 28, 29, 1956; March 1, 2, 4, 6, 7, 3, 10, 11, 13, 16, 18, 30, 1956; April 8, 1956, 11, 12, 13, 14, 15, 29, 1956; May 5, Feb. 16, 1956; August 28, 1956, October 22, 1956; December 2, 1956; January 8, 12, 22, 24, 28, 29, 1956; February 1, 14, 24, 27, 1956; March 14, 19, 20, 21, 22, 23, 24, 25, 26, 29, 31, 1956; April 3, 24, 25, 26, 27, 1956; May 10, 11, 26, 1956; June 2, 3, 6, 20, 23, 28, 30, 1956; July 3, 12, 1956; August 7, 13, 24, 26, 1956; September 8, 18, 19, 20, 22, 1956; October 4, 11, 14, 27, 30, 1956; November 3, 14, 15, 16, 18, 20, 1956; December 3, 7, 10, 16, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 1956; January 1, 3, 4, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 26, 17, 18, 21, 22, 24, 28, 29, 31, 1957; February 11, 13, 14, 19, 21, 22, 25, 26, 28, 29, 1957; March 3, 5, 7, 10, 11, 11, 17, 19, 22, 23, 1957; April 5, 17, 24, 1957; May 2, 4, 7, 16, 17, 22, 31, 28, 31, 1957; June 1, 15, 22, 24, 27, 1957; July 7, 14, 17, 27, 31, 1957; August 16, 17, 21, 25, 1957; September 6, 8, 13, 19, 28, 1957; October 18, 25, 26, 1957; November 2, 6, 7, 8, 14, 27, 28, 30, 1957; December 1, 15, 18, 19, 29, 1957; January 3, 6, 19, 20, 25, 1958; Feb. 2, 1958; March 1, 18, 29, 1958; April 10, 1958; May 7, 8, 31, 1958; June 4, 5, 22, 1958; August 29, 1958; September 11, 1958; October 22, 24, 30, 1958; November 5, 13, 14, 16, 1958; December 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 1958; January 6, 7, 10, 11, 13, 14, 15, 16, 18, 20, 23, 27, 29, 1959; February 7, 14, 21, 24, 19, 1959; March 7, 8, 14, 22, 27, 1959; May 2, 5, 30, 1959; July 7, 10, 23, 24, 28, 1959; August 1, 8, 23, 1959; September 9, 1959; October 30, 1959; November 24, 29, 1959; December 1, 22, 1959; January 24, 1960; February 7, 9, 12, 26, 27, 1960; March 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 22, 23, 24, 29, 30, 1960; April 1, 3, 8, 9, 12, 13, 1960.

(2) All documents, letters, telegrams, writings, or other [fol. 25] correspondence between the said defendant and the following persons:

Don McKee, Montgomery, Alabama
Maurice W. Castel, Jr., Mobile, Alabama
John R. Chadwick, Birmingham, Alabama
Charles R. Murphy, Montgomery, Alabama
William H. McDonald, Montgomery, Alabama
G. C. Long, Montgomery, Alabama

(3) All writings or other documents constituting applications for employment, or contracts of employment, or any business arrangement with the individuals specified in the preceding paragraph as so-called "string-correspondents", or with any other persons who are residents of the State of Alabama, and who have been so-called "string correspondents" for the Times since 1956.

(4) All documents or other writings constituting a statement of rules and regulations from the Times to any "string correspondents" in the State of Alabama during the last four years, regarding the nature of the duties of these "string correspondents".

(5) All writings, letters, written communications or other documents constituting correspondence between Mr. Harold A. Faber, of the Times and any resident of Alabama since January 1, 1956.

(6) Copies of all checks, vouchers, and receipts, and any other papers or documents in connection with the payment by the Times to any of the persons named in paragraph 2 of this motion, or any other so-called "string correspondents", resident in Alabama, since January 1, 1956.

(7) All documents and writings constituting expense accounts or statements of expenses submitted for or in behalf of the following individuals, or any other agents, servants, or employees of the Times relating to expense incurred by them in the State of Alabama since January 1, 1956:

Clarence Dean	Claude Sitton
Wayne Phillips	George Barrett
Harrison Salisbury	Peter Kihss
John Popham	I. Plenn
Thos. M. Hurley	

(8) Copies of all checks, vouchers, or other documents representing payments by any persons, (natural or artificial, including the State of Alabama and any county or municipality thereof), who were or are residents of Alabama, in connection with any advertising by them in the Times since January 1, 1956.

(9) Copies of all documents constituting contracts or business arrangements by any person (natural or artificial, including the State of Alabama and any county or municipality thereof), who were or are residents of Alabama, executed in connection with any advertising by them in the Times since January 1, 1956.

(10) Copies of all documents or other writings consti- [fol. 26] tuting the statement of all receipts by the Times from advertising by persons described in the preceding paragraph of this motion, in the Times, since January 1, 1956.

(11) Copies of all writings or other documents evidencing the total receipts by the Times from the sale of its newspaper in Alabama for the year 1959 and the first five months of 1960.

(12) Copies of all written material mailed into the State of Alabama by the Times for the purpose of obtaining subscriptions to its newspaper from Alabama residents since January 1, 1956.

(13) Copies of all written material mailed into the State of Alabama by the Times constituting solicitation of subscriptions to its microfilm edition by any persons (natural or artificial, including the State of Alabama and any county or municipality thereof), who were or are residents of Alabama.

(14) Copies of all documents or other advertising matter sent from the Times to any person in Alabama (natural or artificial, including the State of Alabama and any county or municipality thereof), who are or were residents of Alabama, in connection with the sale of New York Times Index, since January 1, 1956.

(15) All documents, records, books, accounts, and letters, relating to the sale, shipment, or delivery, including receipts, records of subscriptions and of collections, and payments of and for publications of the said defendant, as the foregoing documents relate to any such sale, shipment or delivery, of such publications in the State of

Alabama for the year 1959, and for the first five months of 1960.

(16) All documents which constitute records of sales of the said defendant's publications in the State of Alabama for the year 1959 and for the first five months of 1960.

(17) All documents, books, papers, accounts, letters, or other documents, relating to all business arrangements and transactions between the said defendant and any other person, firm, or corporation, regarding the sale, shipment, delivery and distribution of the said defendant's publications in the State of Alabama for the year 1959, and for the first five months of 1960.

(18) All documents, records, letters, or other papers relating to the solicitation of business on behalf of the said defendant and its publications in the State of Alabama since January 1, 1956, including such documents as relate to the solicitation of advertising from Alabama.

(19) Copies of all documents, records, books, accounts, letters, vouchers, checks, or other records of payments of [fol. 27] the said defendant to any person, firm, or corporation, with reference to the sale, shipment, delivery, distribution, or any of the defendant's publications in the State of Alabama, or relating to any advertising from persons, firms, or corporations in Alabama (including the State of Alabama and any county or municipality or any other subdivision thereof), or by any such person to the said defendant, arising out of any contractual relations between such person and the said defendant, for the year 1959 and the first five months of 1960.

(20) All records, documents, books, letters, accounts, or other papers relating to the employment by the said defendant of any persons in the State of Alabama for the years 1956 through 1959 and for the first five months of 1960; and any checks or other vouchers evidencing payment to any residents of the State of Alabama for the years 1956 through 1959 and for the first five months of 1960.

(21) All records, documents, books, letters, accounts, papers, checks or vouchers, evidencing payment, directly or indirectly, to said defendant by residents of the State of Alabama (including the State of Alabama and any county, municipality, or other subdivision thereof), or by the said defendant to the State of Alabama, for the years 1956, through 1959 and for the first five months of 1960.

Steiner, Crum & Baker, By: M. R. Nachman, Jr.;
Scott, Whitesell & Scott, By: Calvin Whitesell;
Attorneys for Plaintiff.

AFFIDAVIT OF M. R. NACHMAN, JR.

State of Alabama
Montgomery County

Before the undersigned Bernice S. Osgoode, a Notary Public in and for the County of Montgomery, State of Alabama, personally appeared M. R. Nachman, Jr., who is known to me, and who, being first duly sworn, deposes and says under oath that he is one of the attorneys of record for plaintiff in the foregoing cause; that the New York Times Company has in its possession and under its control or custody, the foregoing books, documents, records, papers, vouchers, checks, receipts, correspondence, letters and other documents; that these documents are normally kept by this defendant in the regular course of its business, and are in the possession, custody, or control of said defendant; that the documents specified in the foregoing motion are pertinent to the issues in this case and are necessary and material and essential to the proper presentation of plaintiff's case and in successfully meeting [fol. 28] the defenses which are anticipated, more particularly those defenses raised in this defendant's motion to quash. It is apparent that the foregoing documents will reveal the nature and extent of the business done by this defendant in the State of Alabama, and the revenues and profits which it derives from its business transactions in this state. These documents contain material directly pertinent to the question of the nature and extent of the

business done by this defendant, and contain material which is pertinent and necessary in meeting the anticipated defense which this defendant has sought to raise.

The information contained in the foregoing materials cannot be had from other sources available to the plaintiff. This information is by its nature within the exclusive knowledge of defendant, and exclusively within its possession, custody, and control. The material contained in the foregoing documents will enable the plaintiff to present his case in such a manner as to facilitate proof and progress of the trial of this cause, including a hearing on the motion and dilatory pleadings which this defendant has sought to make.

M. R. Nachman, Jr.

Sworn to and subscribed before me, this the 30th day of May, 1960.

Bernice S. Osgoode, Notary Public, Montgomery County, Alabama.

Certificate of Service (omitted in printing).

Please Take Notice that the foregoing motion will be presented to the Hon. Walter B. Jones, Presiding Judge of the Circuit Court of Montgomery County, Alabama, on June 7, 1960 at 12:00 Noon.

M. R. Nachman, Jr., Of Counsel.

[File endorsement omitted]

[fol. 29]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

RULING OF COURT ON PLAINTIFF'S MOTION TO PRODUCE, FILED MAY 31, 1960—June 9, 1960

This matter comes on for hearing on the motion of plaintiff, L. B. Sullivan, for an order requiring the defendant, the New York Times Company, a corporation, one of the defendants in the above styled cause, to produce certain

books, documents, writings, issues of the New York Times, letters, telegrams, correspondence, checks, vouchers, receipts, and other writings specified in paragraphs 1 through 21 of plaintiff's said motion.

The matter was submitted to the Court upon the said motion to produce of the plaintiff, and the affidavit of M. R. Nachman, Jr., one of the attorneys for the plaintiff, whose affidavit was attached to the said motion.

Counsel for all of the parties were present at the hearing on the said motion, and the Court heard arguments of counsel for the plaintiff and counsel for the defendant, The New York Times Company.

After consideration of the motion, and the said affidavit, and argument of counsel, the Court is of the opinion that the said motion to produce is meritorious; that the written materials specified in paragraphs 1 through 21 of the motion are necessary and material to the issues in this cause, and more specifically relate to the questions raised and to be presented to this Court by the said defendant's motion to quash; that the written materials specified in paragraphs 1 through 21 are necessary and material, in that they will reveal the nature and extent of the business done by this defendant in the State of Alabama; that the said written materials specified in paragraphs 1 through 21 are normally kept by this defendant in the regular course of its business, and are in the possession, custody, or control of the said defendant; that the information contained in these materials cannot be had from other sources available to the plaintiff, and are by their nature within the exclusive knowledge of this defendant and exclusively within its custody, possession or control.

Wherefore, premises considered, it is Considered, Ordered and Adjudged by the Court that the defendant, The New York Times Company produce in the Office of the Clerk of this Court on or before Noon, June 30th, 1960, all of the books, papers, documents, and other written materials specified in paragraphs 1 through 21 of the plaintiff's motion to produce, filed in this Court, except that paragraph 2 is limited to the period of time since January 1, 1956 to date of service. Said documents shall remain in the custody of the Clerk of this Court, subject

to the further orders of this Court. And to this ruling the defendant, New York Times Co., duly excepts.

Done in Montgomery, this the 9th day of June, 1960.

Walter B. Jones, Circuit Judge Presiding.

[File endorsement omitted]

[fol. 30]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

EXCEPTION TO COURT'S RULING ON PLAINTIFF'S MOTION TO PRODUCE—Filed June 16, 1960

Comes the defendant, The New York Times Company, a corporation, and excepts to the ruling of the Court of the 9th day of June, 1960, granting plaintiff's motion to require defendant to produce those documents and instruments as are set forth in said motion of plaintiff of the 31st day of May, 1960, and prays the Court to enter this defendant's exception to said ruling on the minutes of the Court.

Beddow, Embry and Beddow, By: P. E. Embry, Attorneys for defendant, The New York Times Company, a corporation, Appearing Specially.

[File endorsement omitted]

[fol. 31]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

MOTION FOR EXTENSION OF TIME—Filed June 29, 1960

Comes The New York Times Company, a corporation, and without submitting itself to the jurisdiction of the Circuit Court of Montgomery County, Alabama, and without waiving in any wise its limited appearance therein objecting to the jurisdiction thereof by the filing of this motion and filing this motion strictly and only in connection with matters arising out of and in connection with this defendant's special appearance objecting to the jurisdiction of this court respectfully shows unto the court as follows:

1. That on the 9th day of June, 1960, Honorable Walter B. Jones, as Judge of this Honorable Court, entered an order requiring this defendant to produce in the office of the Clerk of this Court on or before noon June 30, 1960, certain books, papers, documents and other written materials, which order was issued in pursuance of the motion to produce filed by the plaintiff on the 31st day of May, 1960.

2. That the aforesaid order entered on the 9th day of June, 1960, ordered this defendant to produce a great number of documents, many of which are difficult to locate and difficult to assemble in form for production, and they must be transmitted a great distance and it has been impossible for this defendant to comply with the order of the court within the time specified.

Wherefore Premises Considered, this defendant respectfully moves this Honorable Court to grant unto it an extension of time for the production of the aforesaid books, papers, documents and other written material.

Beddow, Embry and Beddow, By: Roderick M. MacLeod, Jr., Attorneys for the New York Times Company, a Corporation, appearing specially.

Certificate of Service (omitted in printing).

[File endorsement omitted]

[fol. 32]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

ORDER OF COURT EXTENDING TIME FOR PRODUCTION OF DOCUMENTS—June 29, 1960

This matter again coming on to be heard is submitted on the motion for an extension of time to produce documents and papers heretofore ordered produced by the New York Times Company and there are present at the hearing counsel of record for the plaintiff and counsel for the defendant. Upon consideration of same, the Court is of the opinion that it would be reasonable to extend the

time for production of documents until 12 o'clock noon Monday, July 11th, 1960.

Done, this the 29th day of June, 1960.

Walter B. Jones, Circuit Judge Presiding.

[File endorsement omitted]

[fol. 33]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

MOTION TO QUASH SERVICE OF PROCESS—Filed May 20, 1960

Comes the New York Times Company, a corporation, named as one of the defendants in the above styled cause, by its attorneys, and appearing solely and specially for the purpose of filing this its motion to quash attempted service of process in this cause and for no other purpose and without waiving service of process upon it and without making a general appearance and expressly limiting its special appearance to the purpose of quashing the attempted service of process upon it in this case alleges the following, separately and severally:

1. On, to-wit, April 26, 1960, The New York Times Company, a corporation received by registered mail in New York City, New York, a summons and complaint and affidavit of the Honorable Betty Frinke, Secretary of State of the State of Alabama, attached thereto, in a cause entitled "L. B. Sullivan, plaintiff, vs. The New York Times Company, a corporation, et als, Defendants, in the Circuit Court of Montgomery County, Alabama, No. 578", all as more fully appears from the records and papers on file in said cause in this Honorable Court.

2. On, to-wit, April 21, 1960, a summons and complaint in that cause entitled "L. B. Sullivan, Plaintiff, vs. The New York Times Company, a corporation, et als, Defendants, In the Circuit Court of Montgomery County, Alabama, No. 578", was served upon one Don McKee by the Sheriff of Montgomery, Alabama, Honorable M. S. Butler, and said Sheriff's return was in substance as follows, "also a copy on Don McKee as agent for the New York Times

4/21/60 M. S. Butler"; and this defendant alleges that the said Don McKee, at the time of the service of said summons and complaint upon him, at the time of the filing of said summons and complaint in this cause, and at the time of the accrual of any alleged or purported cause of action set forth in said summons and complaint, was not an officer, agent or other person by law or in fact or by statutes of the State of Alabama provided, a proper person upon whom service of process can be made so as to subject this defendant to the jurisdiction of this Honorable Court.

3. The New York Times Company, a corporation, is a foreign corporation, organized and existing under the laws of the State of New York, with its principal place of business at The Times Building, 229 West 43rd Street, New York, New York, and said corporation is not qualified and has not heretofore been qualified, is not and has not been licensed, is not and has not been authorized to do business in Alabama; does not have an agent for service of process upon it in Alabama, and did not have at the time of the service of the process as is described in preceding paragraphs 1 [fol. 34] and 2 herein; has no office or place of business situated in, or employee, agent or servant, in the State of Alabama, and did not have at the time of the service of process as is described in the preceding paragraphs 1 and 2 herein; is not doing business in Alabama or in Montgomery County, Alabama, and was not doing business in Alabama or in Montgomery County at the time of the service of process as described in preceding paragraphs 1 and 2 herein.

4. The New York Times Company, a corporation, is a foreign corporation, organized and existing under the laws of the State of New York, with its principal place of business at The Times Building, 229 West 43rd Street, New York, New York. Said corporation is not qualified, and has not heretofore been qualified, is not and has not been licensed, is not and has not been authorized to do business in Alabama; does not have an agent for service of process upon it in Alabama, and did not have at the time of the service of the process as is described in preceding paragraphs 1 and 2 herein, at the time of the accrual of the

alleged cause of action set forth in the summons and complaint filed in this cause nor at the time of the filing of said summons and complaint in this cause; is not doing business in Alabama or in Montgomery County, Alabama, and was not doing business in Alabama or in Montgomery County, Alabama, at the time of the service of process as described in preceding paragraphs 1 and 2 herein, at the time of the accrual of the alleged cause of action set forth in the summons and complaint filed in this cause nor at the time of filing of said summons and complaint in this cause.

5. The New York Times Company, a corporation, has not at any time pertinent to the alleged cause of action or the purported service of process in this cause done business in the State of Alabama or in Montgomery County, Alabama.

6. The New York Times Company, a corporation, is not amenable to service of process in the State of Alabama, and was not at any time pertinent to the alleged cause of action or the purported service in this cause and has not waived service of due process herein by voluntary appearance or otherwise.

7. The cause of action alleged in plaintiff's complaint did not accrue from the doing of any business or the performing of any work or service or as an incident thereto by the defendant, The New York Times Company, a corporation, or its agent, servant or employee in the State of Alabama.

8. The defendant, The New York Times Company, a corporation, is a non-resident corporation of the State of Alabama, and is not qualified under the Constitution and laws of the State of Alabama to do business in said State and the defendant has not done any business or performed [fol. 35] any character of work or service in this state so as to appoint the Secretary of State of Alabama its true and lawful attorney or agent upon whom process may be served in this action so as to subject this defendant to the jurisdiction of this Court.

9. The affidavit of M. R. Nachman, Jr., attached to the complaint filed in this cause purporting to set forth facts

authorizing service of process on the defendant, The New York Times Company, a corporation, by service upon the Secretary of State of Alabama as provided for in Title 7, Section 199 (1) Code of Alabama, 1940 as amended, does not appear to have been made by the party to the cause or his agent or attorney.

10. It does not appear that there is on file in the Office of the Secretary of State of Alabama a certificate or statement under oath by the plaintiff or his attorney that the provisions of Title 7, Section 199 (1) Code of Alabama, 1940, as amended are applicable to this case.

11. It does not appear that there is on file in the cause an affidavit made by the plaintiff or his agent or attorney stating facts showing that Title 7, Section 199 (1) Code of Alabama, 1940, as amended, is applicable to this cause.

12. There is not on file in this cause, nor is there attached to the writ or process purporting to have been served on the defendant, The New York Times Company, a corporation, an affidavit made by the plaintiff or his agent or attorney stating facts showing that the provisions of Title 7, Section 199 (1) of the Code of Alabama of 1940, as amended, are applicable to this cause.

13. Don McKee, upon whom service of process was made, as is described in paragraph 2 herein was not an officer, agent, servant or employee of The New York Times Company, a corporation at the time of service of process upon him as described in paragraph 2 herein, nor at the time of the accrual of any alleged cause of action set forth in the complaint in this cause, nor at the time of the filing of the summons and complaint in this cause.

14. The New York Times Company, a corporation, is a foreign corporation within the meaning of the laws of the State of Alabama and not qualified under the Constitution and Laws of the State of Alabama to do business in said State. On April 21, 1960 and on April 26, 1960, it did not do and prior thereto had not done any business or performed any character of work or service in the State of Alabama out of which any alleged cause of action as set forth in the complaint in this cause accrued.

15. The New York Times Company, a corporation, is a foreign corporation within the meaning of the laws of the State of Alabama and not qualified under the Constitution and laws of the State of Alabama to do business in said [fol. 36] State. On April 21, 1960, it did not do and prior thereto had not done any business or performed any character of work or service in this state out of which any alleged cause of action as set forth in the complaint in this cause accrued.

16. The New York Times Company, a corporation, is a foreign corporation within the meaning of the laws of the State of Alabama and not qualified under the Constitution and laws of the State of Alabama to do business in said State. On April 26, 1960, it did not do and prior thereto had not done any business or performed any character of work or service in this state out of which any alleged cause of action as set forth in the complaint in this cause accrued.

17. The New York Times Company, a corporation, is not subject to the jurisdiction of this Honorable Court in this cause for this court to assume jurisdiction of said defendant in this cause would deny to defendant due process of law in contravention of the 14th Amendment to the Constitution of the United States.

18. The New York Times Company, a corporation, is not subject to the jurisdiction of this Honorable Court in this cause and for this court to assume jurisdiction of said defendant in this cause of action would deny to defendant due process of law in contravention of the 5th Amendment to the Constitution of the United States.

19. The New York Times Company, a corporation, is not subject to the jurisdiction of this Honorable Court in this cause and for this court to assume jurisdiction of said defendant in this cause of action would deny to defendant due process of law in contravention of the 1st Amendment to the Constitution of the United States.

20. The New York Times Company, a corporation, is not subject to the jurisdiction of this Honorable Court in this

cause and for this court to assume jurisdiction of said defendant in this cause of action would deny to defendant due process of law in contravention of Article 1, Section 13 of the Constitution of Alabama of 1901.

21. Under the Constitution and laws of the United States, The New York Times Company, a corporation, is not amenable to process in the State of Alabama for and on account of the fact that the said corporation was not doing business in said State of Alabama at the time of any service of process in this cause as described in preceding paragraphs 1 and 2 herein, or at the time of the accrual of the alleged cause of action set forth in the complaint in this cause, or at the time of the filing of said complaint.

22. The service of process in the manner and mode in [fol. 37] which same was attempted to be served upon this defendant as is described in preceding paragraph 1 and 2 herein constitutes a denial of due process of law under the Constitution and laws of the United States.

23. The service of process in the manner and mode in which same was attempted to be served upon this defendant as is described in preceding paragraph 1 and 2 herein constitutes a denial of due process of law under the Constitution and laws of the State of Alabama.

24. The New York Times Company, a corporation, has not, either on April 21, 1960 or April 26, 1960, or at the time of the accrual of any alleged cause of action as set forth in the complaint in this cause or at the time of the filing of said complaint, done any business or performed any character or work or service in the State of Alabama such as would bring the said corporation within the meaning and purview of the provisions of Title 7, Section 199 (1) Code of Alabama, 1940, as amended, as relied upon by the plaintiff in this cause to make said corporation amenable to process of this Honorable Court.

25. The New York Times Company, a corporation, has not, either on April 21, 1960 nor April 26, 1960, or at the time of the accrual of any alleged cause of action as set forth in the complaint in this cause, or at the time of the filing

of said complaint, done any business or performed any character of work or service in the State of Alabama out of which the alleged cause of action set forth in the complaint in this cause accrued within the meaning and purview of the provisions of Title 7, Section 199 (1) Code of Alabama, 1940, as amended, as relied upon by the plaintiff in this cause to make said corporation amenable to process of this Honorable Court.

26. The Sheriff's return of the purported service of process on Don McKee is insufficient to show valid service upon the defendant, The New York Times Company, a corporation, or its agent, servant or employee.

27. The Sheriff's return of the purported service on Don McKee affirmatively shows that the said Don McKee was served as agent of the New York Times and not as agent of this defendant.

Wherefore, The New York Times Company, a corporation, appearing specially for this purpose and no other moves the Court as follows:

1. That service of process as described in preceding paragraph 1 of this motion be quashed as to the New York Times Company, a corporation.

2. That service of process as described in preceding paragraph 2 of this motion be quashed as to The New York Times Company, a corporation.

3. That purported service of process upon The New York Times Company, a corporation, of April 21, 1960, described in preceding paragraph 2 herein and that purported service of process of April 26, 1960, upon said [fol. 38] defendant as described in preceding paragraph 1 herein be quashed and that said defendant be stricken as a party hereto.

4. That this action be dismissed as to The New York Times Company, a corporation.

5. That this court dismiss this action as to The New York Times Company, a corporation, for lack of jurisdiction of the person of the said The New York Times Company, a corporation.

6. That this Court dismiss this action as to The New York Times Company, a corporation, for lack of jurisdiction of the subject matter of said action.

Beddow, Embry and Beddow, By: P. Eric Embry, Attorneys for The New York Times Company, a corporation, appearing specially for the sole purpose of the filing of this motion.

State of Alabama
Jefferson County

Comes Roderick M. MacLeod, Jr., who first being duly sworn deposes and says that he has knowledge of the facts set forth in the above and foregoing motion and the same are true and that he, as attorney, for the New York Times Company, a corporation, is authorized to make this affidavit.

This 19th day of May, 1960.

Roderick M. MacLeod, Jr.

Sworn to and subscribed before me this 19th day of May, 1960.

Mary B. Weatherly, Notary Public.

CERTIFICATE OF SERVICE

I, Roderick M. MacLeod, Jr., of counsel for defendant, The New York Times Company, a corporation, appearing specially for the purpose of the filing of this the above and foregoing motion to quash hereby certify that I have delivered a copy of the above and foregoing motion to Messrs. Scott, Whitesell and Scott and Messrs. Steiner, Crum and Baker, attorneys for plaintiff in this cause, by delivering a copy of said motion by hand to each of said respective firms of attorneys at their respective offices at the Bell Building and at the First National Building in the City of Montgomery, Alabama, this the 20th day of May, 1960.

Roderick M. MacLeod, Jr., Of Counsel.

[File endorsement omitted]

[fol. 39]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

AMENDMENT TO MOTION TO QUASH SERVICE OF PROCESS —Filed July 25, 1960

Comes the New York Times Company, a corporation, and appearing solely and specially for the purpose as is set forth in it's original motion to quash service of process heretofore filed in this cause, and without waiving service of process and expressly limiting its special appearance to the purpose of amending its motion to quash by adding thereto the following numbered grounds to said motion, separately and severally:

28. The provisions of Title 7, Section 199 (1) of the Code of Alabama 1940, as amended, are invalid, null and void for that the same are in contravention of due process of law under the Fourteenth Amendment to the Constitution of the United States.

29. For that to subject the defendant, The New York Times Company, a corporation, under the facts set forth in the affidavit of M. R. Nachman, Jr., attached to the complaint in this cause, to the jurisdiction of this Court by virtue of the provisions of Title 7, Section 199 (1) of the Code of Alabama, 1940, as amended, would be violative of the provisions of the Fourteenth amendment to the Constitution of the United States by denying defendant due process of law.

30. For that to subject the defendant The New York Times Company, a corporation, to the jurisdiction of this Court under the facts set forth in the affidavit of M. R. Nachman, Jr., attached to the complaint in this cause would be to place an unreasonable burden upon interstate commerce or to place an unreasonable burden upon the commerce of the several states.

31. For that to subject the defendant, The New York Times Company, a corporation, to the jurisdiction of this Court would place an undue burden upon interstate commerce and deny to this defendant due process of law as

guaranteed to it by the provisions of the Fourteenth amendment to the Constitution of the United States.

Beddow, Embry & Beddow, By: P. Eric Embry, Attorneys for the New York Times Co., a corporation appearing specially and for the sole purpose for filing this amendment.

State of Alabama
Jefferson County

Comes Roderick M. MacLeod, Jr., who first being duly sworn deposes and says that he has knowledge of the facts set forth in the above and foregoing amendment to defendant's motion to quash and the same are true, and that he as attorney for The New York Times Company, a corpora-
[fol. 40] tion, is authorized to make this affidavit.

This the 25th day of July, 1960.

Roderick M. MacLeod, Jr.

Sworn to and subscribed before me this 25th day of July, 1960.

P. Eric Embry, Notary Public

Certificate of Service

I, Roderick M. MacLeod, Jr., of counsel for defendant, The New York Times Company, a corporation, appearing specially for the purpose of filing the above and foregoing amendment to defendant's motion to quash hereby certify I have delivered a copy of same to Messrs. Scott, Whitesell and Scott and Messrs. Steiner, Crum and Baker, Attorneys for plaintiff in this cause by delivering a copy of said amendment by hand to the Honorable M. R. Nachman, Jr., in open Court on this the 25th day of July, 1960.

Roderick M. MacLeod, Jr., Of Counsel.

[File endorsement omitted]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

ORDER AND OPINION ON MOTION TO QUASH—August 5, 1960

Plaintiff, a resident of Montgomery, Alabama, has sued defendant, The New York Times Company, a corporation, and Others, in this Court for an allegedly libelous publication specified in the complaint. The matter is now before this Court on the motion, and amended motion, of the defendant, The New York Times Company (hereinafter referred to as the "Times"), to quash the service of process upon it. Other defendants are not involved in these motions.

Service was obtained on the Times by serving the Secretary of the State of Alabama pursuant to the provisions of Title 7, Section 199 (1), Code of Alabama, 1940, as amended, and by personal service on one Don McKee, as agent for the New York Times. Without dispute, the Secretary of State has performed all acts required of her under the provisions [fol. 41] of this section regarding notification to the Times.

General Appearance

This motion, and its amendment, purport to be a special appearance for the sole purpose of quashing service of process. However, ground 6 of the prayer of this motion asks this Court to "dismiss this action as to The New York Times Company, a corporation, for lack of jurisdiction of the subject matter of said action". Clearly, this ground goes beyond the question of jurisdiction of this Court over the person of the defendant. Plaintiff's attorneys make a threshold argument in opposition to the Times' motion that this defendant has made a general appearance in this case, and has thereby waived any defects in service of process, and has submitted its corporate person to the jurisdiction of this Court.

Plaintiff's contention is sound.

This defendant cannot assert that it is not properly before this Court, and in the same breath argue that if it is, this Court has no jurisdiction of the subject matter of the action.

The Supreme Court of Alabama in *Blankenship* v. *Blankenship*, 263 Ala. 297, 303, 82 So. 2d 335, has recently held that a party's appearance in a suit for any purpose other than to contest the Court's jurisdiction over the person of such party, is a general appearance in the cause. See also *Thompson* v. *Wilson*, 224 Ala. 299, 300, 140 So. 139, where an objection to the jurisdiction of the Court to hear and determine the matter in controversy on grounds other than proper personal service on the defendant was considered a general appearance.

The Alabama rule is the majority one. See Annotation, 25 A. L. R. 2d. 835, 838. And the rule is applicable "notwithstanding an express statement by the defendant that he appears specially or solely for the purpose of making the objection", 25 A.L.R. 2d. at 840. The matter was succinctly put by the Court of Appeals of New York in *Jackson* v. *National Grange Mutual Liability Co.*, 299 N.Y. 333, 87 N.E. 2d. 283, 284:

> "under its special appearance, the defendant company could do nothing but challenge the jurisdiction of the Justice's Court over its person . . . Hence by its attempt to deny jurisdiction of the subject of the action, the company waived that special appearance and submitted its person to the jurisdiction of the Court."

While its assertion of lack of jurisdiction of this Court over the subject matter of this action would be sufficient to constitute a general appearance, the Times has gone further and taken other steps in this cause inconsistent with its asserted special appearance. It sought to invoke the [fol. 42] original jurisdiction of the Supreme Court of Alabama by applying for the extraordinary writ of mandamus to review the order of this Court directing it to produce certain documents. The petition was presented to the Supreme Court and briefed on grounds other than lack of jurisdiction over the person of this defendant. This defendant sought to have the Supreme Court, by extraordinary writ, vacate an order of this Court on non-jurisdictional grounds—that is, grounds totally unrelated to its special appearance in the Alabama courts.

Such action, too, has been held to be inconsistent with a special appearance, and, accordingly, a waiver of the same. *Vaughan* v. *Vaughan*, 267 Ala. 117, 121, 100 So. 2d. 1:

> "Respondent . . . by not limiting her appearance and by including non-jurisdictional as well as jurisdictional grounds in her motion to vacate . . . has made a general appearance and has thereby waived any defect or insufficiency of service. (Citations)"

These acts in the Supreme Court, all inconsistent with its special appearance, strengthen the conclusion of this Court that the Times has appeared generally in this cause.

Validity of Substituted Service

In view of the foregoing holding that the Times has made a general appearance in the cause, and has waived its special appearance, it is not essential to a decision on this defendant's motion to consider the matter of whether service of process on the Times is valid. But, in view of the voluminous testimony of this latter question, and in view of the manifold contacts with the Times maintains with the State of Alabama, it seems appropriate to explain why this Court considers that the Times is amenable to process and suit in the Alabama courts regardless of its general appearance.

Our statute, Title 7, Section 199 (1) Alabama Code 1940, accords with widespread legislation of recent origin designed to afford state residents the opportunity of maintaining suit against foreign corporations, which, while maintaining significant business contract within the State, nevertheless do not qualify to do business as provided by state law. This Alabama statute makes such an unqualified foreign corporation subject to suit here if it does business in this state, and if the cause of action sued on arises out of or is incident to the business done in Alabama. The scope of our statute has been defined in *Boyd* v. *Warrent Paint Co.*, 254 Ala. 687, 688, 49 So. 2d. 599:

> "In determining the question, we are not here concerned with state law, since it is not controlling. The

issue is regarded in this jurisdiction as a federal ques-
[fol. 43] tion of whether subjection of the defendant to this sovereignty comports with federal due process. *Ford Motor Co.* v. *Hall Auto Co.*, 226 Ala. 385, 147 So. 603; *St. Mary's Oil Engine Co.* v. *Jackson Oil & Fuel Co.*, 224 Ala. 152, 138 So. 834. As was said in Ford Motor Co. v. Hall Auto Co., supra: 'It is recognized that the federal authorities are controlling on questions entering into the inquiry and ascertainment of the facts (1) of doing business, and (2) of authorized agency on which process must be served, or (3) those of due process, equal protection, and interstate commerce. * * * ' 226 Ala. 387, 147 So. 605."

Thus, the Alabama statute allows this suit against the Times in Alabama if the suit is not prohibited here by the due process clause (Amendment 14) of the Constitution of the United States. Moreover, the *Boyd* case, supra, makes clear that under this due process inquiry that there is "subsumed the question of whether the action was based on a liability arising out of the local activities, it naturally being less burdensome to subject a corporation to defense of actions so arising than those arising elsewhere". 254 Ala., at 691.

In order to consider in context the business activities of the New York Times in Alabama, the Court adopts the outline of the essential business functions of a newspaper contained in *Consolidated Cosmetics* v. *D. A. Publishing Co.*, 186 F. 2d. 906, 908 (7th Cir. 1951):

"The functions of a magazine publishing company obviously include gathering material be be printed, obtaining advertisers and subscribers; printing, selling and delivering the magazines for sale. Each of these, we think, constitutes an essential factor of the magazine publication business. Consequently, if a nonresident corporation sees fit to perform any one of those essential functions in a given jurisdiction, it necessarily follows that it is conducting its activities in such a manner as to be subject to jurisdiction."

The key question is whether The New York Times, by virtue of its business activities in Alabama maintains sufficient contacts with this State so that suit against it here accords with traditional concepts of fairness and the orderly administration of the laws "which it was the purpose of the due process clause to insure". *International Shoe Co.* v. *Washington*, 326 U. S. 310, 319.

In the foregoing context, the Court considers the activities of the Times in this State. Plaintiff has submitted evidence not only as to the year 1960. His evidence, in an attempt to establish a continuing pattern of such activities, extends from the year 1956 to the present.

To gather news for the Times, eleven admittedly regular staff correspondents have spent 153 days in Alabama. The results of their efforts are revealed in part by the 59 staff news stories in evidence which contain the by-lines of these correspondents. Their news gathering activities have been coordinated and correlated by the Times National News Editor, Harold Faber, who testified in this case; and by the [fol. 44] southern regional correspondent, who is regularly assigned to cover news events in this state, among others in the southern region. This present correspondent, Claude Sitton, gave a deposition in this case. He came into Alabama and covered news events in Montgomery in March, 1960, relating to certain "demonstrations", which form the basis of a portion of the publication now in suit; and he came into Alabama in May, 1960 on assignment to cover the perjury trial of one Martin Luther King, which event is also the subject of a portion of this publication.

Another regular staff correspondent, Harrison Salisbury, entered Alabama on assignment from the witness, Faber, in April, 1960, and gathered news in Birmingham, Montgomery and Andalusia for subsequent publication in the Times.

In addition to the news gathering activities of its staff correspondents, the Times maintains three so-called "string-correspondents", who reside in Montgomery, Birmingham, and Mobile. The stated purpose of such "stringers" in this state is to have them available for news stories of note in the area of their residence—subject to call by the Times. The testimony shows that the Times has made an active

effort to maintain a "stringer" at these three places in Alabama at all times; has commented upon the value of the services which they have performed; and has actively sought their replacement upon the resignation of any one of them. The testimony is clear that present "stringers" McKee and Chadwick have performed valuable services for the Times' staff correspondents over and above the stories which the stringers themselves sent in for publication. And they performed such services in April, 1960. Moreover, "stringer" McKee was entrusted with the delicate task of investigating the facts involved in the instant complaint when the plaintiff demanded that the Times retract the publication.

Obviously, the Times considers the news gathering activities of these staff correspondents and "stringers" a valuable and unique complement to the news gathering facilities of the Associated Press and other wire services of which the Times is a member. The stories of the "stringers" appear under the "slug" "Special to the New York Times", and there were 59 such "specials" in the period from January 1, 1956, through April, 1960. The staff stories and the "specials" are copyrighted and sold by the Times to other newspapers. Thus, the following rule of law, stated in 30 A.L.R. 2d. at page 751, is applicable:

> "A foreign newspaper corporation which not only employs reporters in another state to obtain news for its own newspaper, but also sells to other newspapers the news thus obtained, has been held to be doing business in the state." (Citing authorities.)

[fol. 45] In search of revenues, the Times actively solicits advertising in the State of Alabama. One representative spent over a week soliciting advertising in Montgomery, Mobile and Birmingham. Another representative spent 7 days in Alabama visiting Birmingham, Montgomery and Selma, and a third representative spent three days in Birmingham. All of this business activity occurred in the period from July 1, 1959 through June 3, 1960, after an advertising office was opened in Atlanta, which includes Alabama within its territory. Manager Hurley sold one

ad to the State of Alabama which brought between three and five thousand dollars. In 1958, an ad appearing in the Alabama supplement of February 2 brought over $28,000 to the Times. According to its own testimony, the Times received between seventeen and eighteen thousand dollars from ads obtained in Alabama from January 1 through April, 1960. Annualized, these revenues would approximate Fifty to Fifty-five Thousand Dollars per year.

A Times witness, Roger Waters, testified that the daily circulation in Alabama was 390 papers per day, and that Sunday circulation was approximately 2,500 papers. This would produce a revenue of $35,884.55 per year, which, when added to the advertising revenue would give the Times a revenue from business activities in Alabama of over $85,000 per year.

Papers are sold to individual subscribers and independent dealers and wholesalers. Freight is prepaid in New York, thus making the carrier the agent of the Times. Credit is given for unsold newspapers without physical return of the papers. In these circumstances, title does not pass until actual delivery to the consignee.—Title 57, Section 25, Alabama Code 1940; 2 Williston, *Sales*, Section 279 (b) page 90. In giving credit for return, the Times sometimes requires a certificate from the local freight agent located in Alabama. It thus appears that the Times owns property and handles claims in the State of Alabama.

It has also sold and distributed in the State of Alabama sets of its Microfilm Edition to 13 customers, and the New York Times Index to eighteen.

The Times contends that the cause of action did not arise out of its conduct of business in Alabama. The Court is of the opinion that the cause of action is "an incident thereto" within the language of Title 7, Section 199 (1), Alabama Code, 1940. It is noteworthy that Sitton was assigned to Montgomery by the Times to cover the demonstrations at Alabama State College and the King trial, with which the ad dealt. But, where a corporation is doing business in the State, due process does not require that the cause of action arise out of the business done there.—

Perkins v. *Benguet Consolidated Mining Co.*, 342 U. S. 437, 96 L.Ed. 485; *Bomze* v. *Nardis Sportswear, Inc.*, 165 F. 2d. [fol. 46] 33 (2d. Cir.—Judge Learned Hand—cited with approval in the *Boyd* case); Tauza v. Susquehanna Coal Co., 220 N.Y. 259, 155 N.E. 915 (Judge Cardozo). And *Boyd*, supra, extends the Alabama statute to the permissible limits of Federal due process.

In arriving at its decision, the Court has followed these relevant decisions of the Supreme Court of the United States:

International Harvester Co. v. Kentucky, 234 U.S. 579, 58 L. Ed. 1479;
International Shoe Co. v. Washington, 326 U.S. 310, 90 L. Ed. 95;
Perkins v. Benguet Mining Co., supra;
Polizzi v. Cowles Publications, 345 U.S. 663, 97 L. Ed. 1331;
McGee v. International Ins. Co., 355 U.S. 220, 2 L. Ed. 2d. 223;
Scripto v. Carson, 362 U.S. 207, 4 L. Ed. 660.

While it is not necessary to discuss each of those decisions in detail, it is noteworthy that in the McGee case the minimal contact with the State of California which the Supreme Court held sufficient was the delivery by the insurance company by mail of one insurance policy, and the receipt from the insured in California by mail of premiums on this policy.

In the Scripto case, the minimal contact held sufficient was the production in the State of Florida of an annual revenue of about $42,000 by independent dealers or brokers, who worked for others as well as Scripto. Here, Alabama sent in an annual revenue of over twice that amount, and regular employees of the Times combined their efforts with independent dealers to produce it. See also *W.S.A.Z.* v. *Lyons*, 254 F. 2d. 242 (6th Cir. 1958).

The Court finds an extensive and continuous course of Alabama business activity—news gathering; solicitation of advertising; circulation of newspapers and other products. These systematic business dealings in Alabama give

the Times substantial contract with the State of Alabama, considerably in excess of the minimal contracts required by the Supreme Court decisions supra. The Times does business in Alabama.

Likewise, the Court finds that to subject the Times to suit in Alabama comports with traditional notions of fair play and the proper administration of justice. Plaintiff resides here, and is a public official of the City of Montgomery. If a reputation has a situs, it is here in Montgomery. The events occurred largely in Montgomery, and witnesses who have knowledge of the truth or falsity of the events as outlined in the advertisement reside in or near Montgomery. Of the four co-defendants, two reside [fol. 47] in Montgomery, one in Birmingham and one in Mobile. The Circuit Court of Montgomery County is the appropriate and convenient forum to try this action.

What was said in the case of *Clements* v. *MacFadden Publications, Inc.*, 28 F. Supp. 274, 276, is applicable here:

> "To carry the present line of holdings to any greater extent than they now exist could easily result in a publication two thousand miles away destroying a man's reputation, whether he be great or small, and requiring him to come to unfriendly territory, perhaps, to effect his vindication in the courts of justice."

This Court has always been a staunch advocate and defender of freedom of the press. But this freedom and other safeguards of the due process clause do not command the plaintiff to carry his witnesses, his evidence, his counsel and himself more than one thousand miles to a distant forum to bring his action for alleged damages to his reputation and to try his case. It is, therefore,

Considered, Ordered, and Adjudged by the Court that the motion of the defendant, The New York Times Company, to quash, and its amended motion to quash, be and the same are hereby denied.

Dated, this the 5th day of August, 1960.

Walter B. Jones, Circuit Judge.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEFENDANT, THE NEW YORK TIMES COMPANY, A CORPORATION, EXCEPTION TO THE ORDER DENYING ITS AMENDED MOTION TO QUASH—Filed August 9, 1960

Comes The New York Times Company, a corporation, and hereby enters its exception to the order, judgment or decree of this Court of the 5th day of August, 1960, denying its amended motion to quash service of process.

This, the 8th day of August, 1960.

Beddow, Embry and Beddow, By: P. Eric Embry, Attorneys for the Defendant, The New York Times Company, a corporation.

[File endorsement omitted]

[fol. 48]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEMURRER OF DEFENDANT, THE NEW YORK TIMES COMPANY, A CORPORATION—Filed August 18, 1960

Now Comes the defendant, The New York Times Company, a corporation, in the above styled cause and demurs to plaintiff's complaint and to each Count thereof, separately and severally, and as grounds for said demurrer, sets down and assigns the following, separately and severally:

1. Said Count fails to state a cause of action.

2. For that said Count contains a misjoinder of parties defendant.

3. For that said Count contains a misjoinder of causes of action.

4. For that it does not appear from the allegations of said Count that the plaintiff was the subject or object of any alleged defamatory or libelous material as is set forth in said Count.

5. For that it does not appear from the allegations of said Count that any publication of any alleged false and defamatory matter, or libelous matter was of and concerning the plaintiff in this cause.

6. For that the allegations of said Count affirmatively show that the matter complained of as being defamatory, or libelous, set forth in said Count, is not libelous or defamatory per se.

7. For that it affirmatively appears from the allegations of said Count that the alleged defamatory or libelous matter set forth therein is neither libelous or defamatory per se, nor is the same libelous or defamatory by innuendo.

8. For that the allegations of said Count fail to show wherein plaintiff was defamed or libeled by the publication of all or any part of the matter set forth in said Count as Exhibit "A" therein.

9. For that the allegations of said Count affirmatively show that there is a misjoinder of causes of action in said Count in that plaintiff complains of the publication of false and defamatory matter by this defendant but fails to allege wherein the other defendants to said cause made any publication of any such alleged libelous matter.

10. For that the allegations of said Count fail to allege wherein this plaintiff was spoken of or referred to in the alleged libelous and defamatory statements set forth in said Count and alleged by the plaintiff to have been false and defamatory.

11. For that the allegations of said Count fail to state wherein plaintiff has suffered any damage as a result of any alleged libelous or defamatory matter published by this defendant.

12. For that the allegations of said Count fail to state wherein the plaintiff was referred to in connection with, of, or concerning the matters alleged to have been false [fol. 49] and defamatory and alleged to have been published by this defendant.

13. For that the allegations of said Count wherein plaintiff alleges that this defendant published false and defamatory matter, or charges reflecting upon the conduct of the plaintiff, as set forth in said count, are mere conclusions of the pleader.

14. For that the allegations of said Count wherein plaintiff alleges that this defendant published false and defamatory matter, or charges reflecting upon the conduct of the plaintiff, as set out in said Count, is mere conjecture on the part of the plaintiff.

15. For that the allegations of said Count wherein plaintiff alleges that this defendant published false and defamatory matter of and concerning the plaintiff, are mere conclusions on the part of the pleader.

16. For that the allegations of said Count wherein plaintiff alleges that this defendant published false and defamatory matter of and concerning the plaintiff, is mere conjecture on the part of the plaintiff.

17. For that the allegations of said Count, wherein it is alleged that this defendant published false and defamatory matter of and concerning the plaintiff, fail to disclose what false and defamatory matter was published of and concerning the plaintiff, directly or by inference.

18. For that the allegation of said Count, wherein it is alleged that this defendant published false and defamatory matter of and concerning the plaintiff, fail to disclose what false and defamatory matter was published of and concerning the plaintiff so that same could fairly be inferred to have been published of and concerning the plaintiff.

19. For that the allegations of said Count attempt to join more than one cause of action in said Count against this defendant.

20. For that said Count contains a duplicity of causes of action.

21. For that it affirmatively appears from the allegations of said Count that neither all nor any part of the alleged

false and defamatory matter alleged to have been published by this defendant and as set out in said Count, reflected upon the conduct of the plaintiff as a member of the Board of Commissioners of the City of Montgomery, Alabama.

22. For that it affirmatively appears from the allegations of said Count that neither all nor any part of the alleged false and defamatory matter alleged to have been published by this defendant referred to plaintiff.

23. For that it affirmatively appears from the allegations of said Count that neither all nor any part of the alleged false and defamatory matter alleged to have been published by this defendant referred to plaintiff as a member of the Board of Commissioners of the City of Montgomery, Alabama.

[fol. 50] 24. For that it affirmatively appears from the allegations of said Count that neither all nor any part of the alleged false and defamatory matter alleged to have been published by this defendant imputed any improper conduct to plaintiff.

23-a. For that it affirmatively appears from the allegations of said Count that neither all nor any part of the alleged false and defamatory matter, alleged to have been published by this defendant, subjected plaintiff to any public contempt.

24-a. For that it affirmatively appears from the allegations of said Count that neither all nor any part of the alleged false and defamatory matter, alleged to have been published by this defendant, subjected plaintiff to ridicule.

25. For that it affirmatively appears from the allegations of said Count that neither all nor any part of the alleged false and defamatory matter, alleged to have been published by this defendant, subjected plaintiff to shame.

26. For that it affirmatively appears from the allegations of said Count that neither all nor any part of the alleged false and defamatory matter, alleged to have been published by this defendant, prejudiced plaintiff in his office, profession, trade or business.

27. For that it affirmatively appears from the allegations of said Count that neither all nor any part of the alleged false and defamatory matter alleged to have been published by this defendant, as set out in said Count referred to or made mention of, or concerned the plaintiff.

28. For that it affirmatively appears from the allegations of said Count that plaintiff has suffered no injury or damage as a result of the publication of any alleged false and defamatory matter as set out in said Count.

29. For that the allegations of said Count fail to disclose wherein plaintiff was subjected to any public ridicule or shame by publication of any alleged false and defamatory matter as set out in said count.

30. For that the allegations of said Count fail to disclose wherein plaintiff was injured and damaged in the lawful pursuit of his office, profession, trade or business.

31. For that the allegations of said Count affirmatively disclose that the alleged false and defamatory matter set out in said Count is not libelous or defamatory per se and said Count fails to allege any special damages alleged to have been suffered by plaintiff as a result of the publication of said alleged libelous and defamatory matter, as set out in said Count.

[fol. 51] 32. For that the alleged false and defamatory matter set out in said Count is not libelous per se, and plaintiff fails to allege wherein same is libelous or defamatory by innuendo.

33. For that the alleged false and defamatory matter set forth in said Count in no wise refers to or is, on its face, published of and concerning the plaintiff and the allegations of said Count fail to disclose wherein the same refers to, or is of and concerning the plaintiff.

34. For that it affirmatively appears that plaintiff has failed to allege any special damages suffered by him as a result, or as a proximate consequence of the publication of the alleged false and defamatory matter set out in said Count.

Beddow, Embry & Beddow, By: P. Eric Embry, Attorneys for the defendant, The New York Times Company, a Corporation.

[File endorsement omitted]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

OBJECTIONS TO INTERROGATORIES—Filed September 16, 1960

Comes the defendant, The New York Times Company, a corporation, and objects to the following interrogatories heretofore propounded to it by the plaintiff and objects to each of the said interrogatories on the separate and several grounds assigned below:

1. Defendant objects to interrogatory No. 8 on the ground that the same calls for the results of an investigation initiated and made by the attorneys for this defendant after the publication of the advertisement complained of and in connection with the preparation of the defense of the action which defendant anticipated might be brought by this plaintiff, and upon the grounds that it calls for a conclusion and for an answer which is the ultimate inquiry before the court and jury in this cause when the interrogatory makes reference to "correctness of statements contained in said advertisement", and upon the further grounds that the interrogatory is not pertinent to the issue or matter in dispute between the parties.

2. The defendant objects to all of interrogatory No. 9, other than that part asking whether or not any report was received by this defendant on the grounds that the same calls for the result of an investigation initiated and made by the attorneys for this defendant after the publication of the advertisement complained of and in connection with the preparation of the defense of the action which defendant anticipated might be brought by this plaintiff, and upon the grounds that said interrogatory calls for defendant [fol. 52] to reveal its witnesses or evidence and upon the grounds that the interrogatory is not pertinent to the issue and matter in dispute between the parties.

3. The defendant objects to interrogatory No. 12 on the ground that the same is incompetent, irrelevant and immaterial and on the ground that there is an invasion of the province of the court and the jury and calls for an answer which would be a conclusion as to the ultimate fact to be determined by the court and jury in this cause on or of the evidence and upon the further ground that it is not pertinent to the issue and matter in dispute between the parties.

4. The defendant objects to interrogatory No. 18 on the ground that it invades the province of the court and the jury, it calls for defendant to reveal the names of witnesses and to reveal its evidence and calls for matter which is the product of attorney's work in the preparation of defense of this cause, it calls for an answer which would constitute a conclusion as to the ultimate question of fact to be determined by the court and jury in this cause, it calls for incompetent, and illegal conclusions on the part of this defendant, and incompetent, irrelevant and immaterial evidence, and is not pertinent to the issue or matter in dispute between the parties.

5. The defendant objects to interrogatory No. 19 upon the grounds that this interrogatory calls for evidence which is incompetent, irrelevant and immaterial and is not pertinent to the issue or matter in dispute between the parties.

6. The defendant objects to attaching a copy of the news stories as called for by interrogatory No. 4 on the grounds that the actual news stories are equally within the knowledge of the plaintiff inasmuch as the same were produced by this defendant in response to this plaintiff's motion to produce same and were introduced into evidence in this cause on a hearing of this defendant's motion to quash service of process herein, and on further ground that they are not pertinent to the matter or issue in dispute between the parties.

Beddow, Embry & Beddow, By: Roderick M. MacLeod, Jr., Attorneys for Defendant, The New York Times Company, a corporation.

[File endorsement omitted]

[fol. 52-A]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

No. 27416

L. B. SULLIVAN, Plaintiff,

v.

THE NEW YORK TIMES COMPANY, A Corporation, et al., Defendants.

MOTION FOR DEFAULT JUDGMENT

Comes the plaintiff, L. B. Sullivan, and moves the Court for default judgment in this cause, pursuant to the provisions of Title 7, paragraph 483, Code of Alabama, and as grounds therefor assigns the following:

1. On, to-wit, June 21, 1960, plaintiff served on Messrs. Beddow, Embry & Beddow, Massey Building, Birmingham, Alabama, as attorneys for the defendant The New York Times Company, certain interrogatories, together with an affidavit of their materiality.

2. Despite the passage of more than sixty days since the service of copy of the aforesaid interrogatories, defendant has answered none of these interrogatories.

Wherefore, premises considered, plaintiff moves this Court, pursuant to its powers contained in Title 7, paragraph 483, Code of Alabama, to direct a judgment by default against the said defendant to be entered.

Steiner, Crum & Baker; Scott, Whitesell & Scott;
Attorneys for Plaintiff.

I hereby certify that a copy of the foregoing motion has been on this day mailed to Messrs. Beddow, Embry & Beddow, Massey Building, Birmingham, Alabama, attorneys for defendant The New York Times Company.

This September 9, 1960.

M. R. Nachman, Jr., Of counsel for Plaintiff.

ORDER

The foregoing motion will be heard at 11 o'clock A.M. on the 19 day of September, 1960.

Walter B. Jones, Judge of Circuit Court.

[fol. 53]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

ORDER OF THE COURT ON THE QUESTION OF OBJECTIONS TO INTERROGATORIES AND THE MOTION FOR CONTINUANCE—September 20, 1960

This matter is set at this time for the hearing of the objections by the defendant, The New York Times Company, to the interrogatories heretofore propounded to it by the plaintiff and the same having been argued to the Court by counsel for the respective parties and upon consideration of same the Court if of the opinion that the defendant, The New York Times Company, is not required to answer the interrogatory in the first part of No. 12 "Is the following matter contained in the advertisement made the basis of this suit true?" The Court, however, is of the opinion that the defendant, The New York Times Company, should answer the second part of said interrogatory as same appears at the top of Page 3 of said interrogatory.

The Court is further of the opinion that the objections to interrogatories 8, 9, and 18 are not well taken and said objections are separately overruled and the defendant, The New York Times Company, is given until 12 o'clock noon October 4th, 1960 within which to make answer to said interrogatories above named.

The Court notes that the plaintiff withdraws his insistence that the defendant answer Interrogatory No. 19.

The plaintiff also agreed with the defendant that the defendant's objection No. 6 relating to Interrogatory No. 4 was well taken.

It is Ordered by the Court that at 10:00 A.M. Friday, October 28th, 1960, be and the same is hereby designated as the day to settle the pleadings in this action.

The Court is of the opinion that the motion of the defendant, The New York Times Company, for a continuance is not well taken and said motion for a continuance is hereby denied.

Done, this the 20th day of September, 1960.

Walter B. Jones, Circuit Judge Presiding.

[File endorsement omitted]

[fol. 54]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

ADDITIONAL DEMURRERS OF DEFENDANT, THE NEW YORK TIMES COMPANY, A CORPORATION—Filed October 28, 1960

Comes the defendant, The New York Times Company, a corporation, in the above styled cause and further demurs to plaintiff's complaint, and to each count thereof, separately and severally, and as additional grounds for said demurrer to those originally assigned by this defendant sets down and assigns the following, separately and severally:

35. For aught appearing from the allegations of said count plaintiff is not a member nor one of the "police" referred to in the alleged libelous statement set forth in plaintiff's said count.

36. From aught appearing from the allegations of said count plaintiff is not a "southern violator" referred to in the alleged libelous statement set forth in plaintiff's said count.

37. From aught appearing from the allegations of said count plaintiff is not a member of the class of persons allegedly the subject of the alleged libelous statement.

38. From aught appearing from the allegations of said count plaintiff is not a member of the group allegedly the subject of the alleged libelous statement appearing in said count.

39. From aught that appears plaintiff is not a member of the group referred to in the alleged libelous matter set forth in said count, for it is not alleged that plaintiff is a member of the "police" referred to in the alleged libelous matter set forth in said count.

40. For it is not alleged in said count that plaintiff is a "Southern violator" referred to in the alleged libelous matter set forth in said count.

41. For that the allegations of said count affirmatively show that said alleged libelous matter contained or set forth therein do not identify plaintiff as a "Southern violator".

42. For that it affirmatively appears from the allegations of said count that the alleged libelous matter set forth therein do not identify plaintiff as a member of the "police" referred to in said count.

43. For that it affirmatively appears from the allegations of said count that the alleged libelous matter does not identify plaintiff as being a member of or one of "they" as the same is set forth and contained in the alleged libelous matter set out in said count.

44. For aught appearing from the allegations of said count the "police" referred to in the alleged libelous matter set out therein were from a city other than Montgomery, Alabama.

[fol. 55] 45. For aught appearing from the allegations of said count the "police" referred to in the libelous matter set forth therein were campus police of the school named in said matter.

46. From aught appearing from the allegations of said count there are no "Southern violators" in the City of Montgomery, Alabama or elsewhere in the State of Alabama.

47. From aught appearing from the allegations of said count plaintiff, as a member of the Board of Commissioners of the City of Montgomery, Alabama, or as a commissioner of the City of Montgomery, Alabama, has no connection

with the matters and things referred to in the said alleged libelous statement set forth in said count.

48. From aught appearing from the allegations of said count the Board of Commissioners of the City of Montgomery, Alabama has no connection with the matters referred to in the alleged libelous statement set forth in said count.

49. From aught appearing from the allegations of said count, plaintiff, as a member of the Board of Commissioners of the City of Montgomery, Alabama, had no duties or responsibilities in connection with the police of the City of Montgomery, Alabama.

50. From aught appearing from the allegations of said count, plaintiff, as a member of the Board of Commissioners of the City of Montgomery, Alabama, had no duties or responsibilities in connection with the police department of the City of Montgomery, Alabama.

51. For aught appearing from the allegations of said count plaintiff as a member of the Board of Commissioners of the City of Montgomery, Alabama, had no duty or responsibility in connection with public safety in the City of Montgomery, Alabama.

52. For aught appearing from the allegations of said count, plaintiff, as a member of the Board of Commissioners of the City of Montgomery, Alabama, had no duty or responsibility in connection with the government of the City of Montgomery, Alabama.

53. For aught appearing from the allegations of said count the Board of Commissioners of the City of Montgomery, Alabama was not the governing body of said city at the times and places referred to in said count.

54. For aught appearing from the allegations of said count the Board of Commissioners of the City of Montgomery, Alabama are not "Southern violators".

[fol. 56] 55. For aught appearing from the allegations of said count the general public could have been referred

to in the alleged libelous matter set forth and contained in said count of which plaintiff complains.

56. For aught appearing from the allegations of said count the "police" referred to in the alleged libelous matter set forth in said count is a class or group which is unidentifiable according to the ordinary import of the word as used in the alleged libelous matter set forth in said count.

57. For aught appearing from the allegations of said count the "Southern violators" referred to in the alleged libelous matter set forth in said count is a class or group which is unidentifiable according to the ordinary import of the words as used in the alleged libelous matter set forth in said count.

58. For that the allegations of said count set forth and state more than one publication of the alleged libelous matter complained of therein and, therefore attempts to state more than one cause of action in the same count.

59. For that the allegations of said count allege that publication of said alleged libelous matter was made "in the City of New York, State of New York, the City of Montgomery, Alabama, and throughout the State of Alabama", which sets forth and states more than one alleged publication, and therefore attempts to state more than one cause or action in the same count.

60. For that the allegations of said count affirmatively show that the alleged publication is not libelous per se, and the allegations of said count set forth no special damage.

61. For that the allegation of the alleged publication set forth in said count is, if anything, libelous per quod, and there is no allegation of special damage to the plaintiff contained in said count.

62. For that there is no allegation in said count of conspiracy among the several defendants in this cause.

63. From aught appearing from the allegation of this count each defendant acted independently of each other defendant in this cause.

64. For that the publication of said alleged libelous matter set forth in said count is alleged to have been made in the City of New York, State of New York, and the allegations of said count do not set forth the law or laws of the State of New York.

65. For that the allegations of said count state that the publication of the alleged libelous matter was in the City of New York and the State of New York and the statutory law of that State concerning plaintiff's alleged cause of [fol. 57] action is not set forth in haec verba nor in substance.

66. For that the allegations of said count state that the publication of the alleged libelous matter was in the City of New York and State of New York, and the common law of the State of New York concerning the subject matter of plaintiff's alleged cause of action is not set forth in the manner prescribed by law.

67. For that the alleged publication of the alleged libelous matter is set forth in said count as having been made in the City of New York and the State of New York and the decisional law of the State of New York concerning the subject matter and governing the subject matter of plaintiff's alleged cause of action is not set forth in the manner prescribed by law.

68. For that the allegations of said count show that the place of commission of any alleged tort by this defendant was in the City of New York and the State of New York and the law of that State governing plaintiff's alleged cause of action is not set forth in the manner prescribed by law.

69. From aught appearing from the allegations of said count the subject matter of plaintiff's alleged cause of action is not a tort in the place of its alleged commission, which is alleged to be in the City of New York and the State of New York.

70. From aught appearing from the allegations of said count the matter alleged therein is not sufficient to state a cause of action in the place where the alleged tort is

stated to have been committed by this defendant, which is in the City of New York and the State of New York.

71. For aught appearing from the allegations of said count no cause of action is stated according to the law of the state where the alleged libelous matter was published which is alleged to be in the City of New York and the State of New York.

72. For that the place of commission of the alleged tort according to the allegations of said count is in the City of New York and the State of New York and the common law of that State governing and concerning the plaintiff's alleged cause of action is not set forth in the manner prescribed by law.

73. For that the place of commission of the alleged tort by this defendant is, by the allegation of said count, in the City of New York and the State of New York and the statutory law of that State is not set forth in haec verba nor in substance.

74. For that the allegations of said count affirmatively show that the matter complained of therein as defamatory and libelous by plaintiff is not libelous per se and there are no allegations of special damages to plaintiff set forth [fol. 58] therein and plaintiff claims in said count both punitive and compensatory damages.

75. For that no extrinsic facts are alleged in said count to show that the matter complained of by plaintiff was libelous of plaintiff.

76. For that no extrinsic facts are alleged in said count to show that the matter complained of by plaintiff was libelous of plaintiff and further that no facts showing any special injury or damage to plaintiff are set forth therein.

77. For that the allegations of said count affirmatively show that the alleged defamatory words complained of in said count contain no direct reference to the plaintiff and no facts are alleged to show that the same in fact refer to the plaintiff.

78. For that the allegations of said count do not state extrinsic facts showing that the alleged defamatory words contained therein are degrading or would tend to injure the plaintiff's reputation by imputing to him some incapacity or lack of due qualification to fill the public office held by plaintiff or charge him with any positive past misconduct which injuriously affects him in his public office, or charge him with the holding of principles which are hostile to the maintenance of government.

79. For that the allegations of said count contain a misjoinder of causes of action in that the alleged cause of action set forth therein attempts to charge this defendant with the commission of an intentional wrong while sounding in case merely against the other defendants sued therein.

80. For that the allegations of said count affirmatively show that the alleged defamatory matter complained of therein is not libelous per se, and the allegations of said count fail to set up or state extrinsic facts to show that the matter complained of was in fact libelous of the plaintiff, nor are any facts alleged showing any special damage or injury to the plaintiff by such alleged defamatory matter.

81. For that the allegations of said count, if taken as true, could not authorize the submission to a jury of the question of whether plaintiff was libeled and suffered any injury or damage therefrom, for as a matter of law the allegation of said count, if proved, could not constitute a cause of action for libel, for so to do would be violative of and contrary to the First Amendment to the Constitution of the United States and constitute an abridgement of the freedom of the press.

82. For that the allegation of said count fails to state a cause of action for libel against this defendant, and if the allegations of said count were proved would not constitute a cause of action for libel against this defendant, [fol. 59] and if construed so to do would be contrary to the Constitution of the United States and the First Amend-

ment thereto and be and constitute an abridgement of the freedom of the press.

Beddow, Embry and Beddow, By: P. Eric Embry, Attorneys for The New York Times Company, A Corporation.

[File endorsement omitted]

[fol. 60]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

AMENDED DEMURRERS OF DEFENDANT, RALPH D. ABERNATHY —Filed October 28, 1960

Now comes Ralph D. Abernathy, one of the defendants in the above entitled cause and amends his Demurrers to the Complaint heretofore filed in the above entitled cause and separately and severally amends his Demurrers to each count thereof by adding the additional grounds of Demurrer separately and severally as follows: to-wit items 19-67 inclusive, said items read as follows:

19. That it affirmatively appears from the allegations of the Complaint that this defendant had no connection with the publication of the alleged libelous matter.

20. That the alleged libelous matter as set out in each count of the Complaint in paragraph form is taken out of the context in which it appeared in the paid advertisement, and that said paragraphs are not successive paragraphs, but that several paragraphs intervene and there are no facts alleged in the count showing any connection between the first paragraph which is alleged to be libelous and the second paragraph which is alleged to be libelous, as appears on the face of Exhibit A attached to the Complaint.

21. Said count avers no facts entitling the plaintiff to recover of the defendant.

22. The allegation of damage as contained in said count is a mere conclusion of the pleader, not supported by the facts alleged.

23. The allegations of said count do not in and of themselves entitle the plaintiff to recover.

24. Said count does not aver sufficient facts entitling the plaintiff to recover of the defendant the damages alleged.

25. Said count is vague, indefinite and uncertain as to what publication the plaintiff alleges is libelous.

26. Said count does not sufficiently allege facts to inform the defendant of the alleged libelous publication which he is called upon to defend.

27. For aught appearing from said count, the alleged libelous publication did not refer to the plaintiff.

28. For aught appearing from said count, the alleged libelous publication was a fair comment as to the matters contained therein.

29. It affirmatively appears from said count that the alleged libelous publication was a fair comment on the matters and things contained therein and the allegation in said count that the alleged publication was made with malice is a mere conclusion of the pleader, not supported [fol. 61] by the facts alleged therein.

30. The allegations of said count do not aver a libel per se.

31. For aught that appears from said count, the matter published was not libelous per se.

32. It affirmatively appears that the alleged matter was not libelous per se.

33. The alleged publication not being per se libelous, said count fails to aver sufficient facts showing wherein the plaintiff was injured by said alleged publication.

34. For aught appearing from said count, the alleged publication was merely libelous per quod, if libelous at all.

35. It affirmatively appears that the matter published was only libelous per quod, if libelous at all.

36. It affirmatively appears from said count that the plaintiff was not named in the publication of which complaint is made.

37. Because it does not appear that the alleged publication was understood to refer to the plaintiff by any reader of such publication.

38. Because the alleged publication does not, upon its face, appear to have been said of the plaintiff, nor does it appear from said count that any reader of such publication understood that it referred to the plaintiff.

39. Because colloquia, inducements and innuendoes cannot be considered in determining whether or not the alleged publication is libelous per se.

40. Because the alleged publication is reasonably susceptible to an innocent construction.

41. Because the alleged colloquia, inducements and innuendoes as set out in said count conflict with the alleged publication.

42. Because the plaintiff's interpretation of the alleged publication is contrary to the tenor and effect thereof.

43. Because the allegations with respect to the meaning of the alleged publication are mere conclusions of the pleader.

44. Because the plaintiff's alleged interpretation of the publication in question shows that the same is, at most, merely libelous per quod, if libelous at all.

45. Because the alleged publication affirmatively shows that colloquia, inducements and innuendoes or one or more of them are required and, hence, said publication is not libelous per se.

47. Because specific damages are not alleged.

48. Because the allegations with respect to the publi- [fol. 62] cation are mere conclusions of the pleader.

49. Because there is no allegation that the alleged libelous publication was, in fact, maliciously done.

50. Because said count does not specifically aver wherein the alleged publication was maliciously made.

51. Because the allegations of the count to the effect that the defendants maliciously libeled the plaintiff is but a mere conclusion of the pleader not supported by the facts alleged.

52. Because any recovery by the plaintiff in this case would be violative of Article I, Section IV of the Constitution of the State of Alabama of 1901 as a curtailment or restraint of the liberty of the press in the writing and publishing of the defendant's sentiments on the subject therein stated.

53. Because any recovery by the plaintiff in this case would be violative of the First and Fourteenth Amendments to the Constitution of the United States, as an abridgement of the freedom of the press and freedom of speech.

54. Because any recovery by the plaintiff in this case would be violative of the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws, and abridge the privileges and immunities of the defendant.

55. No facts are alleged to show that this defendant published in the City of New York, State of New York, or any place, the advertisement referred to in said Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

56. No facts are alleged to show that this defendant caused to be published in the City of New York, State of New York, or any place, the advertisement referred to in said Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

57. For aught that appears from the Complaint, this defendant did not publish or cause to be published in the City of New York, State of New York, or any other place, the advertisement referred to in said complaint, and any [fol. 63] recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

58. There is no allegation in said Complaint that this individual defendant published or caused to be published the advertisement referred to and attached to the Complaint, and any recovery in this cause would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without the due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said amendment.

59. For that it affirmatively appears from said Complaint and from Exhibit A attached thereto, that this defendant, in fact, did not publish or cause to be published the advertisement referred to in said Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

60. That said Complaint and no count thereof connects the plaintiff in any way with the alleged libelous matter stated in the Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

61. That there is no causal connection between this defendant, the alleged libelous matter stated in the Complaint, and the plaintiff; and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

62. That there is no causal connection between this defendant and the alleged libelous matter stated in the Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the [fol. 64] equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

63. That the Complaint and each count thereof affirmatively shows that the matter complained of appeared in a paid advertisement in the New York Times and that said advertisement shows on its face that this defendant did not cause or was not responsible for said paid advertisement appearing in said newspaper.

64. That the Complaint and each count thereof affirmatively shows that the matter complained of appeared in a paid advertisement in the New York Times and that said advertisement shows on its face that this defendant did not cause or was not responsible for said paid advertisement appearing in said newspaper; and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

65. The averments thereof are conflicting and repugnant.

66. For aught that appears, there was no concert of action between the co-defendants in the Count.

67. The Count is vague and uncertain in that it does not allege how this defendant published the alleged libelous matter.

Respectfully submitted,

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Vernon Z. Crawford, 570 Davis Avenue, Mobile, Alabama;

Solomon S. Seay, Jr., 28 North McDonough St., Montgomery, Alabama,

Attorneys for Defendant, By: Fred D. Gray.

[File endorsement omitted]

[fol. 65]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

AMENDED DEMURRERS OF DEFENDANT, J. E. LOWERY —Filed October 28, 1960

Now comes J. E. Lowery, one of the defendants in the above entitled cause and amends his Demurrers to the Complaint heretofore filed in the above entitled cause and separately and severally amends his Demurrers to each Count thereof by adding the additional grounds of Demurrer separately and severally as follows: to-wit items 19-67 inclusive, said items read as follows:

19. That it affirmatively appears from the allegations of the Complaint that this defendant had no connection with the publication of the alleged libelous matter.

20. That the alleged libelous matter as set out in each count of the Complaint in paragraph form is taken out of the context in which it appeared in the paid advertisement, and that said paragraphs are not successive paragraphs, but that several paragraphs intervene and there are no facts alleged in the count showing any connection between the first paragraph which is alleged to be libelous

and the second paragraph which is alleged to be libelous, as appears on the face of Exhibit A attached to the Complaint.

21. Said count avers no facts entitling the plaintiff to recover of the defendant.

22. The allegation of damage as contained in said count is a mere conclusion of the pleader, not supported by the facts alleged.

23. The allegations of said count do not in and of themselves entitle the plaintiff to recover.

24. Said count does not aver sufficient facts entitling the plaintiff to recover of the defendant the damages alleged.

25. Said count is vague, indefinite and uncertain as to what publication the plaintiff alleges is libelous.

*26. Said count does not sufficiently allege facts to inform the defendant of the alleged libelous publication which he is called upon to defend.

27. For aught appearing from said count, the alleged libelous publication did not refer to the plaintiff.

28. For aught appearing from said count, the alleged libelous publication was a fair comment as to the matters contained therein.

29. It affirmatively appears from said count that the alleged libelous publication was a fair comment on the matters and things contained therein and the allegation in said count that the alleged publication was made with malice is a mere conclusion of the pleader, not supported by the facts alleged therein.

30. The allegations of said count do not aver a libel per se.

[fol. 66] 31. For aught that appears from said count, the matter published was not libelous per se.

32. It affirmatively appears that the alleged matter was not libelous per se.

33. The alleged publication not being per se libelous, said count fails to aver sufficient facts showing wherein the plaintiff was injured by said alleged publication.

34. For aught appearing from said count, the alleged publication was merely libelous per quod, if libelous at all.

35. It affirmatively appears that the matter published was only libelous per quod, if libelous at all.

36. It affirmatively appears from said count that the plaintiff was not named in the publication of which complaint is made.

37. Because it does not appear that the alleged publication was understood to refer to the plaintiff by any reader of such publication.

38. Because the alleged publication does not, upon its face, appear to have been said of the plaintiff, nor does it appear from said count that any reader of such publication understood that it referred to the plaintiff.

39. Because colloquia, inducements and innuendoes cannot be considered in determining whether or not the alleged publication is libelous per se.

40. Because the alleged publication is reasonably susceptible to an innocent construction.

41. Because the alleged colloquia, inducements, and innuendoes, as set out in said count, conflict with the alleged publication.

42. Because the plaintiff's interpretation of the alleged publication is contrary to the tenor and effect thereof.

43. Because the allegations with respect to the meaning of the alleged publication are mere conclusions of the pleader.

44. Because the plaintiff's alleged interpretation of the publication in question shows that the same is, at most, merely libelous per quod, if libelous at all.

45. Because the alleged publication affirmatively shows colloquia, inducements and innuendoes, or one or more of

them, are required and, hence, said publication is not libelous per se.

47. Because specific damages are not alleged.

48. Because the allegations with respect to the publication are mere conclusions of the pleader.

49. Because there is no allegation that the alleged libelous publication was, in fact, maliciously done.

[fol. 67] 50. Because said count does not specifically aver wherein the alleged publication was maliciously made.

51. Because the allegations of the count to the effect that the defendants maliciously libeled the plaintiff is but a mere conclusion of the pleader not supported by the facts alleged.

52. Because any recovery by the plaintiff in this case would be violative of Article I, Section IV of the Constitution of the State of Alabama of 1901 as a curtailment of restraint of the liberty of the press in the writing and publishing of the defendant's sentiments on the subject therein stated.

53. Because any recovery by the plaintiff in this case would be violative of the First and Fourteenth Amendments to the Constitution of the United States, as an abridgement of the freedom of the press and freedom of speech.

54. Because any recovery by the plaintiff in this case would be violative of the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities of the defendant.

55. No facts are alleged to show that this defendant published in the City of New York, State of New York, or any place, the advertisement referred to in said Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal

protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

56. No facts are alleged to show that this defendant caused to be published in the City of New York, State of New York, or any other place, the advertisement referred in said Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

57. For aught that appears from the Complaint, this defendant did not publish or cause to be published in the City of New York, State of New York, or any other place, the advertisement referred to in said Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of [fol. 68] the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

58. There is no allegation in said Complaint that this individual defendant published or caused to be published the advertisement referred to and attached to the Complaint, and any recovery in this cause would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

59. For that it affirmatively appears from said Complaint and from exhibit A attached thereto, that this defendant, in fact, did not publish or cause to be published the advertisement referred to in said Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due

process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

60. That said Complaint and no count thereof connects the plaintiff in any way with the alleged libelous matter stated in the Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

61. That there is no causal connection between this defendant, the alleged libelous matter stated in the Complaint, and the plaintiff; and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

62. That there is no causal connection between this defendant and the alleged libelous matter stated in the Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

63. That the Complaint and each count thereof affirmatively shows that the matter complained of appeared in a [fol. 69] paid advertisement in the New York Times and that said advertisement shows on its face that this defendant did not cause or was not responsible for said paid advertisement appearing in said newspaper.

64. That the Complaint and each count thereof affirmatively shows that the matter complained of appeared in a paid advertisement in the New York Times and that said

advertisement shows on its face that this defendant did not cause or was not responsible for said paid advertisement appearing in said newspaper; and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

65. The averments thereof are conflicting and repugnant.

66. For aught that appears, there was no concert of action between the co-defendants in the Court.

67. The Count is vague and uncertain in that it does not allege how this defendant published the alleged libelous matter.

Respectfully submitted,

Fred D. Gray, 34 N. Perry Street, Montgomery, Alabama.

Vernon Z. Crawford, 570 Davis Ave., Mobile, Alabama.

Solomon S. Seay, Jr., 29 No. McDonough St., Montgomery, Ala., Attorneys for Defendant. By: Fred D. Gray.

[File endorsement omitted]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

AMENDED DEMURRERS OF S. S. SEAY, SR.
—Filed October 28, 1960

Now comes S. S. Seay, Sr., one of the defendants in the above entitled cause and amends his Demurrers to the Complaint heretofore filed in the above entitled cause and separately and severally amends his Demurrers to each count thereof by adding the additional grounds of Demurrer separately and severally as follows: to-wit items 19-67 inclusive, said items read as follows:

19. That it affirmatively appears from the allegations of the Complaint that this defendant had no connection with the publication of the alleged libelous matter.

20. That the alleged libelous matter as set out in each count of the Complaint in paragraph form is taken out of the context in which it appeared in the paid advertisement, and that said paragraphs are not successive paragraphs, but that several paragraphs intervene and there are no [fol. 70] facts alleged in the count showing any connection between the first paragraph which is alleged to be libelous and the second paragraph which is alleged to be libelous, as appears on the face of Exhibit A attached to the Complaint.

21. Said count avers no facts entitled the plaintiff to recover of the defendant.

22. The allegation of damage as contained in said count is a mere conclusion of the pleader, not supported by the facts alleged.

23. The allegations of said count do not in and of themselves entitle the plaintiff to recover.

24. Said count does not aver sufficient facts entitling the plaintiff to recover of the defendant the damages alleged.

25. Said count is vague, indefinite and uncertain as to what publication the plaintiff alleges is libelous.

26. Said count does not sufficiently allege facts to inform the defendant of the alleged libelous publication which he is called upon to defend.

27. For aught appearing from said count, the alleged libelous publication did not refer to the plaintiff.

28. For aught appearing from said count, the alleged libelous publication was a fair comment as to the matters contained therein.

29. It affirmatively appears from said count that the alleged libelous publication was a fair comment on the matters and things contained therein and the allegation in said count that the alleged publication was made with

malice is a mere conclusion of the pleader, not supported by the facts alleged therein.

30. The allegations of said count do not aver a libel per se.

31. For aught that appears from said count, the matter published was not libelous per se.

32. It affirmatively appears that the alleged matter was not libelous per se.

33. The alleged publication not being per se libelous, said count fails to aver sufficient facts showing wherein the plaintiff was injured by said alleged publication.

34. For aught appearing from said count, the alleged publication was merely libelous per quod, if libelous at all.

35. It affirmatively appears that the matter published was only libelous per quod, if libelous at all.

36. It affirmatively appears from said count that the plaintiff was not named in the publication of which complaint is made.

37. Because it does not appear that the alleged publica-
[fol. 71] tion was understood to refer to the plaintiff by any reader of such publication.

38. Because the alleged publication does not, upon its face, appear to have been said of the plaintiff, nor does it appear from said count that any reader of such publication understood that it referred to the plaintiff.

39. Because colloquia, inducements and innuendoes cannot be considered in determining whether or not the alleged publication is libelous per se.

40. Because the alleged publication is reasonably susceptible to an innocent construction.

41. Because the alleged colloquia, inducements and innuendoes, as set out in said count, conflict with the alleged publication.

42. Because the plaintiff's interpretation of the alleged publication is contrary to the tenor and effect thereof.

43. Because the allegations with respect to the meaning of the alleged publication are mere conclusions of the pleader.

44. Because the plaintiff's alleged interpretation of the publication in question shows that the same is, at most, merely libelous per quod, if libelous at all.

45. Because the alleged publication affirmatively shows that colloquia, inducements and innuendoes, or one or more of them, are required and, hence, said publication is not libelous per se.

47. Because specific damages are not alleged.

48. Because the allegations with respect to the publication are mere conclusions of the pleader.

49. Because there is no allegation that the alleged libelous publication was, in fact, maliciously done.

50. Because said count does not specifically aver wherein the alleged publication was maliciously made.

51. Because the allegations of the count to the effect that the defendants maliciously libeled the plaintiff is but a mere conclusion of the pleader not supported by the facts alleged.

52. Because any recovery by the plaintiff in this case would be violative of Article I, Section IV of the Constitution of the State of Alabama of 1901 as a curtailment or restraint of the liberty of the press in the writing and publishing of the defendant's sentiments on the subject therein stated.

53. Because any recovery by the plaintiff in this case would be violative of the First and Fourteenth Amendments to the Constitution of the United States as an abridgement of the freedom of the press and freedom of speech.

54. Because any recovery by the plaintiff in this case [fol. 72] would be violative of the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the defendant the equal pro-

tection of the laws, and abridge the privileges and immunities of the defendant.

55. No facts are alleged to show that this defendant published in the City of New York, State of New York, or any place, the advertisement referred to in said Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

56. No facts are alleged to show that this defendant caused to be published in the City of New York, State of New York, or any other place the advertisement referred to in said Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

57. For aught that appears from the Complaint, this defendant did not publish or cause to be published in the City of New York, State of New York, or any other place, the advertisement referred to in said Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

58. There is no allegation in said Complaint that this individual defendant published or caused to be published the advertisement referred to and attached to the complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the

equal protection of the laws and abridge the privileges and immunities secured to the defendant by said amendment.

59. For that it affirmatively appears from said Complaint and from Exhibit A attached thereto, that this defendant, in fact, did not publish or cause to be published the advertisement referred to in said Complaint, and any recovery in this case wouuld violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of [fol. 73] the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

60. That said Complaint and no count thereof connects the plaintiff in any way with the alleged libelous matter stated in the Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by the said Amendment.

61. That there is no causal connection between this defendant, the alleged libelous matter stated in the Complaint, and the plaintiff; and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

62. That there is no causal connection between this defendant and the alleged libelous matter stated in the Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant the equal protection of the

laws and abridge the privileges and immunities secured to the defendant by said Amendment.

63. That the Complaint and each count thereof affirmatively shows that the matter complained of appeared in a paid advertisement in the New York Times and that said advertisement shows on its face that this defendant did not cause or was not responsible for said paid advertisement appearing in said newspaper.

64. That the Complaint and each count thereof affirmatively shows that the matter complained of appeared in a paid advertisement in the New York Times and that said advertisement shows on its face that this defendant did not cause or was not responsible for said paid advertisement appearing in said newspaper; and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

[fol. 74] 65. The averments thereof are conflicting and repugnant.

66. For aught that appears, there was no concert of action between the co-defendants in the Count.

67. The Count is vague and uncertain in that it does not allege how this defendant published the alleged libelous matter.

Respectfully submitted,

Fred D. Gray, 34 North Perry Street, Montgomery, Alabama;

Vernon Z. Crawford, 570 Davis Avenue, Mobile, Alabama;

Solomon S. Seay, Sr., 29 North McDonough Street, Montgomery, Alabama, Attorneys for Defendant.
By: Fred D. Gray.

[File endorsement omitted]

Amended Demurrers of Fred L. Shuttlesworth —Filed October 28, 1960

Now comes Fred L. Shuttlesworth, one of the Defendants in the above entitled cause and amends his Demurrers to the Complaint heretofore filed in the above entitled cause and separately and severally amends his Demurrers to each count thereof by adding the additional grounds for Demurrer separately and severally as follows: to-wit items 19-67 inclusive, said items read as follows:

19. That it affirmatively appears from the allegations of the complaint that this defendant had no connection with the publication of the alleged libelous matter.

20. That the alleged libelous matter as set out in each count of the Complaint in paragraph form is taken out of the context in which it appeared in the paid advertisement, and that said paragraphs are not successive paragraphs, but that several paragraphs intervene and there are no facts alleged in the count showing any connection between the first paragraph which is alleged to be libelous and the second paragraph which is alleged to be libelous, as appears on the face of Exhibit A attached to the Complaint.

21. Said count avers no facts entitling the plaintiff to recover of the defendant.

22. The allegation of damage as contained in said count is a mere conclusion of the pleader, not supported by the facts alleged.

23. The Allegations of said count do not in and of themselves entitle the plaintiff to recover.

24. Said count does not aver sufficient facts entitling the plaintiff to recover of the defendant the damages alleged.

25. Said count is vague, indefinite and uncertain as to [fol. 75] what publication the plaintiff alleges is libelous.

26. Said count does not sufficiently allege facts to inform the defendant of the alleged libelous publication which he is called upon to defend.

27. For aught appearing from said count, the alleged libelous publication did not refer to the plaintiff.

28. For aught appearing from said count, the alleged libelous publication was a fair comment as to the matters contained therein.

29. It affirmatively appears from said count that the alleged libelous publication was a fair comment on the matters and things contained therein and the allegation in said count that the alleged publication was made with malice is a mere conclusion of the pleader, not supported by the facts alleged therein.

30. The allegations of said count do not aver a libel per se.

31. For aught that appears from said count, the matter published was not libelous per se.

32. It affirmatively appears that the alleged matter was not libelous per se.

33. The alleged publication not being per se libelous, said count fails to aver sufficient facts showing wherein the plaintiff was injured by said alleged publication.

34. For aught appearing from said count, the alleged publication was merely libelous per quod, if libelous at all.

35. It affirmatively appears that the matter published was only libelous per quod, if libelous at all.

36. It affirmatively appears from said count that the plaintiff was not named in the publication of which complaint is made.

37. Because it does not appear that the alleged publication was understood to refer to the plaintiff by any reader of such publication.

38. Because the alleged publication does not, upon its face, appear to have been said of the plaintiff, nor does it appear from said count that any reader of such publication understood that it referred to the plaintiff.

39. Because colloquia, inducements and innuendoes cannot be considered in determining whether or not the alleged publication is libelous per se.

40. Because the alleged publication is reasonably susceptible to an innocent construction.

41. Because the alleged colloquia, inducements, and innuendoes, as set out in said count, conflict with the alleged publication.

42. Because the plaintiff's interpretation of the alleged publication is contrary to the tenor and effect thereof.

[fol. 76] 43. Because the allegations with respect to the meaning of the alleged publication are mere conclusions of the pleader.

44. Because the plaintiff's alleged interpretation of the publication in question shows that the same is, at most, merely libelous per quod, if libelous at all.

45. Because the alleged publication affirmatively shows that colloquia, inducements and innuendoes, or one or more of them, are required, and hence, said publication is not libelous per se.

47. Because specific damages are not alleged.

48. Because the allegations with respect to the publication are mere conclusions of the pleader.

49. Because there is no allegation that the alleged libelous publication was, in fact, maliciously done.

50. Because said count does not specifically aver wherein the alleged publication was maliciously made.

51. Because the allegations of the count to the effect that the defendants maliciously libeled the plaintiff is but a mere conclusion of the pleader not supported by the facts alleged.

52. Because any recovery by the plaintiff in this case would be violative of Article I, Section IV of the Constitution of the State of Alabama of 1901 as a curtailment or

restraint of the liberty of the press in the writing and publishing of the defendant's sentiments on the subject therein stated.

53. Because any recovery by the plaintiff in this case would be violative of the First and Fourteenth Amendments to the Constitution of the United States as an abridgement of the freedom of the press and freedom of speech.

54. Because any recovery by the plaintiff in this case would be violative of the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws, and abridge the privileges and immunities of the defendant.

55. No facts are alleged to show that this defendant published in the City of New York, State of New York, or any place, the advertisement referred to in said Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said amendment.

[fol. 77] 56. No facts are alleged to show that this defendant caused to be published in the City of New York, State of New York, or any other place, the advertisement referred to in said Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

57. For aught that appears from the Complaint, the defendant did not publish or cause to be published in the City of New York, State of New York, or any other place, the advertisement referred to in said Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it

would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said amendment.

58. There is no allegation in said Complaint that this individual defendant published or caused to be published the advertisement referred to and attached to the Complaint, and any recovery in this cause would be violative of the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

59. For that it affirmatively appears from said Complaint and from Exhibit A attached thereto, that this defendant, in fact, did not publish or cause to be published the advertisement referred to in said Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

60. That said Complaint and no count thereof connects the plaintiff in any way with the alleged libelous matter stated in the Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

61. That there is no causal connection between this defendant, the alleged libelous matter stated in the Complaint, and the plaintiff, and any recovery in this case [fol. 78] would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive

the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

62. That there is no causal connection between this defendant and the alleged libelous matter stated in the Complaint, and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

63. That the Complaint and each count thereof affirmatively shows that the matter complained of appeared in a paid advertisement in the New York Times and that said advertisement shows on its face that this defendant did not cause or was not responsible for said paid advertisement appearing in said newspaper.

64. That the Complaint and each count thereof affirmatively shows that the matter complained of appeared in a paid advertisement in the New York Times and that said advertisement shows on its face that this defendant did not cause or was not responsible for said paid advertisement appearing in said newspaper; and any recovery in this case would violate the Fourteenth Amendment to the Constitution of the United States in that it would deprive the defendant of his property without due process of law, deny the defendant the equal protection of the laws and abridge the privileges and immunities secured to the defendant by said Amendment.

65. The averments thereof are conflicting and repugnant.

66. For aught that appears, there was no concert of action between the co-defendants in the Count.

67. The Count is vague and uncertain in that it does not allege how this defendant published the alleged libelous matter.

Respectfully submitted,

Fred D. Gray, 34 North Perry St., Montgomery, Alabama;

Vernon Z. Crawford, 570 Davis Ave., Mobile, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough Street, Montgomery, Alabama, By: Fred D. Gray, Attorneys for Defendant.

[File endorsement omitted]

[fol. 79]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

PLEA ONE OF THE DEFENDANT, THE NEW YORK TIMES COMPANY, A CORPORATION—Filed October 28, 1960

For answer to the complaint, and to each and every count thereof, separately and severally, defendant, The New York Times Company, a corporation, saith:

It is not guilty of the matters alleged therein.

Beddow, Embry & Beddow, By: T. Eric Embry, Attorneys for Defendant, The New York Times Company, a corporation.

[File endorsement omitted]

PLEA TWO OF THE DEFENDANT, THE NEW YORK TIMES COMPANY, A CORPORATION—Filed October 28, 1960

For answer to the complaint, and to each and every count thereof, separately and severally, defendant, The New York Times Company, a corporation, saith:

That The New York Times Company, a corporation, did in its issue of its newspaper on March 29, 1960 publish therein the advertisement made the basis of plaintiff's complaint, but this defendant denies that such advertise-

ment or any part thereof was published by this defendant of and concerning the plaintiff.

Beddow, Embry & Beddow, By: T. Eric Embry, Attorneys for Defendant, The New York Times Company, a corporation.

[File endorsement omitted]

PLEA THREE OF THE DEFENDANT, THE NEW YORK TIMES COMPANY, A CORPORATION—Filed October 28, 1960

For answer to the complaint, and to each and every count thereof, separately and severally, defendant, The New York Times Company, a corporation, saith:

That this defendant did in its issue of its newspaper of March 29, 1960, publish the matter made the basis of plaintiff's complaint and that such matter was a paid advertisement published by this defendant at the order of an advertising agency which paid this defendant for the publishing of such advertisement, but defendant denies that such advertisement or any part thereof was published by this defendant of and concerning the plaintiff.

Beddow & Embry & Beddow, By: T. Eric Embry, Attorneys for Defendant, The New York Times Company, A Corporation.

[File endorsement omitted]

[fol. 80]

PLEA FOUR OF THE DEFENDANT, THE NEW YORK TIMES COMPANY, A CORPORATION—Filed October 28, 1960

For answer to the complaint and to each and every count thereof, separately and severally, defendant, The New York Times Company, a corporation saith:

That this defendant did in its issue of its newspaper of March 29, 1960, publish the advertisement made the basis of plaintiff's complaint, but this defendant denies that the

words in such advertisement or any part thereof complained of by the plaintiff taken in their ordinary or literal sense are libelous or defamatory, and this defendant further denies that they are libelous or defamatory according to their ordinary import of the language contained in such advertisement.

Beddow, Embry & Beddow, By: T. Eric Embry, Attorneys for defendant, The New York Times Company, a corporation.

[File endorsement omitted]

PLEA FIVE OF THE DEFENDANT, THE NEW YORK TIMES COMPANY, A CORPORATION—Filed October 28, 1960

For answer to the complaint and to each and every count thereof, separately and severally, defendant, The New York Times Company, a corporation, saith:

That this defendant did in its issue of its newspaper of March 29, 1960, publish the advertisement made the basis of plaintiff's complaint, but this defendant denies that the words in such advertisement, or any part thereof, taken in their ordinary or literal sense or in the ordinary import of such language damaged the reputation of the plaintiff or injured the plaintiff in his present trade, business or profession, and this defendant further denies that such words taken in their ordinary or literal sense or in their ordinary import of such language impute to the plaintiff any incapacity or lack of due qualification to fill the public office held by plaintiff or charge him with any positive past misconduct which injuriously affects him in his public office or charges him with the holding of principles which are hostile to the maintenance of government.

Beddow, Embry & Beddow, By: T. Eric Embry, Attorneys for defendant, The New York Times Company, a corporation.

[File endorsement omitted]

[fol. 81]

PLEA SIX OF THE DEFENDANT, THE NEW YORK TIMES COMPANY, A CORPORATION—Filed October 28, 1960

For answer to the complaint and to each and every count thereof, separately and severally, defendant, The New York Times Company, a corporation saith:

That this defendant did in its issue of its newspaper of March 29, 1960, publish the advertisement made the basis of plaintiff's complaint, but this defendant denies that the said advertisement or the words contained therein complained of by the plaintiff are libelous or defamatory of the plaintiff, and this defendant denies that the same were published of and concerning the plaintiff, and this defendant further saith that when this defendant published said advertisement in the City of New York, State of New York on the 29th day of March, 1960, it had no reason to believe, nor did it in fact believe, that any of the matters and things set forth therein or any of the words or language set forth therein was false and, in fact this defendant verily believed them to be true, and as a basis for such belief, this defendant saith that said advertisement was proffered to this defendant for publication by it as a paid advertisement by one John Murray, who is an individual whom this defendant believed to be trustworthy; and this defendant further saith that said advertisement was published pursuant to an advertising order for the publication of same by Union Advertising Service, which paid this defendant for the publication of said advertisement according to said order, and said Union Advertising Service was by this defendant believed to be a reputable, recognized advertising agency of the City of New York, State of New York, which this defendant believed to be trustworthy; and this defendant further saith that said advertisement was, by this defendant believed to be endorsed and signed by individuals, whom this defendant believed to be trustworthy; and this defendant further saith that the above and foregoing facts set forth in this, its Plea Six constitute a defense to this defendant in that the same show that said advertisement complained of by the plaintiff in

his complaint was published without malice upon the part of this defendant and in the belief by this defendant that the matters and things contained in said advertisement were true; and this defendant further saith that said advertisement was published in this defendant's newspaper in the City of New York, State of New York, on the 29th day of March, 1960, and therefore, the statutes and decisional law of the State of New York govern plaintiff's cause of action, if any, and this defendant further saith that such statutory law of the State of New York as governs plaintiff's cause of action in this regard is set forth and contained in Sections 338 and 339 of the New York Civil Practice Act, which sections are in words and figures as follows:

[fol. 82] "Section 338, Civil Practice Act.

Proof in action for libel or slander. In an action for libel or slander, the defendant may prove mitigating circumstances, including the sources of his information and the grounds for his belief, notwithstanding that he has pleaded or attempted to prove a justification.

Section 339, Civil Practice Act.

Proving mitigating circumstances in action for wrong. In an action to recover damages for personal injury, or an injury to property, the defendant may prove, at the trial, facts not amounting to a total defense, tending to mitigate or otherwise reduce the plaintiff's damages, if they are set forth in the action either with or without one or more defenses to the entire cause of action. A defendant, in default for want of an answer, may prove facts of that description upon a reference or inquiry to ascertain the amount of the plaintiffs damages."

and such decisional law of the State of New York as governs plaintiff's cause of action in this regard, if any, is expressed by the highest Appellate Court of the State of New York, which is the Court of Appeals, in the cases of *Fleckenstein* vs. *Friedman, et al*, 266 N.Y. 19, 193 N.E. 537, and *Crane* vs. *New York World Telegram Corporation*, 308 N.Y. 470, 126 N.E. 2d 753, and which said Court in

the case of Fleckenstein vs. Friedman, supra, held as follows:

"6. Libel and slander. Phrases 'mitigating circumstances' and 'matter tending only to mitigate or reduce damages' in statutes relating to pleading and proof in actions for libel and slander are synonymous, and mean circumstances bearing on defendant's liability for exemplary damages by reducing moral culpability or on liability for actual damages by showing partial extinguishment thereof (Civil Practice Act, 262, 338)"

"8. Libel and slander. To be admissible, facts tending but failing to prove truth of libel should be pleaded expressly as partial defense to complaint or to one or more causes of action, and when so pleaded matter may be utilized for any proper purpose; statement of purpose of such partial defense being unnecessary (Civil Practice Act 262, 338)."

And which said Court in the case of *Crane* vs. *New York World Telegram Corporation*, held as follows:

"7. Libel and slander. Proof of facts tending to prove truth of libel's charge is relevant in mitigation of punitive damages, for it may negative actual malice by showing that defendant, though mistaken, had reasonable grounds for believing the truth of charge contained in publication."

"Well settled is the basic rule that the amount of plaintiff's recovery may be reduced by proof of facts 'tending but failing to prove the truth' of the libel's charge . . ." That proof is relevant in mitigation of punitive damages, for it may negative actual malice by showing that defendant though mistaken, had reasonable grounds for belief in the truth of the charge contained in publication . . ." "And, turning to compensatory damages, such evidence may serve to reduce them as well. See Fleckenstein v. Friedman supra . . ."

[fol. 83] And which statutory law of the State of New York has not been repealed by the Legislature of the State

of New York, and which decisional law as set forth and contained in the cases hereinabove set out has not been modified or overruled by subsequent decision of such Court of Appeals of the State of New York and is and remains the law of the State of New York and was in full force and effect at all times mentioned in plaintiff's said complaint.

Beddow, Embry & Beddow, By: T. Eric Embry, Attorneys for defendant, The New York Times Company, a corporation.

[File endorsement omitted]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DEMURRER OF PLAINTIFF, L. B. SULLIVAN—
Filed October 28, 1960

Now comes the plaintiff, L. B. Sullivan, and demurs to Plea 2 of the defendant The New York Times Company, a corporation, in this cause, and as grounds thereof assigns the following, separately and severally:

1. Said plea does not set forth facts, but contains mere conclusions of the pleader.

2. Said plea does not, within itself, present a complete defense to this action.

3. It affirmatively appears that said plea is not in the form prescribed by Title 7, pp. 225, Code of Alabama of 1940 as amended.

4. It affirmatively appears that said plea is a special traverse, and is not accordingly a proper plea.

5. It affirmatively appears that said plea is at most a denial of some of the averments of the complaint, and is accordingly improper as a special plea and subject to demurrer.

Now comes the plaintiff, L. B. Sullivan, and demurs to Plea 3 of the defendant, The New York Times Company,

a corporation, in this cause, and as grounds therefor assigns the following, separately and severally:

1. Said plea does not set forth facts, but contains mere conclusions of the pleader.

2. Said plea does not, within itself, present a complete defense to this action.

3. It affirmatively appears that said plea is not in the form prescribed by Title 7, pp. 225, Code of Alabama of 1940 as amended.

[fol. 84] 4. It affirmatively appears that said plea is a special traverse, and is not accordingly a proper plea.

5. It affirmatively appears that said pleas is at most a denial of some of the averments of the complaint, and is accordingly improper as a special plea and subject to demurrer.

Now comes the plaintiff, L. B. Sullivan, and demurs to Plea 4 of the defendant, The New York Times Company, a corporation, in this cause, and as grounds thereof assigns the following, separately and severally:

1. Said plea does not set forth facts, but contains mere conclusions of the pleader.

2. Said plea does not, within itself, present a complete defense to this action.

3. It affirmatively appears that said plea is not in the form prescribed by Title 7, pp. 225, Code of Alabama of 1940 as amended.

4. It affirmatively appears that said plea is a special traverse, and is not accordingly a proper plea.

5. It affirmatively appears that said plea is at most a denial of some of the averments of the complaint, and is accordingly improper as a special plea and subject to demurrer.

Now comes the plaintiff, L. B. Sullivan, and demurs to Plea 5 of the defendant, the New York Times Company, a

corporation, in this cause, and as grounds thereof assigns the following, separately and severally:

1. Said pleas does not set forth facts, but contains mere conclusions of the pleader.

2. Said plea does not, within itself, present a complete defense to this action.

3. It affirmatively appears that said plea is not in the form prescribed by Title 7, pp. 225, Code of Alabama of 1940 as amended.

4. It affirmatively appears that said plea is a special traverse, and is not accordingly a proper plea.

5. It affirmatively appears that said plea is at most a denial of some of the averments of the complaint, and is accordingly improper as a special plea and subject to demurrer.

6. It affirmatively appears that said plea purports to be in mitigation of damages and not in bar.

[fol. 85] Now comes plaintiff, L. B. Sullivan, and demurs to Plea 6 of the defendant The New York Times Company, a corporation, in this cause, and as grounds thereof assigns the following, separately and severally:

1. Said plea does not set forth facts, but contains mere conclusions of the pleader.

2. Said plea does not, within itself, present a complete defense to this action.

3. It affirmatively appears that said plea is not in the form prescribed by Title 7, pp. 225, Code of Alabama of 1940 as amended.

4. It affirmatively appears that said plea is a special traverse, and is not accordingly a proper plea.

5. It affirmatively appears that said plea is at most a denial of some of the averments of the complaint, and is accordingly improper as a special plea and subject to demurrer.

6. It affirmatively appears that said plea purports to be in mitigation of damages and not in bar.

7. It affirmatively appears that plaintiff was a resident of Alabama during the period specified in the complaint, and that the injury to plaintiff occurred mainly in Alabama, hence Alabama law and not New York law governs and said plea constitutes no defense to this action in this forum.

8. Said plea alleges the law of New York, which is not applicable to the pending action.

9. Said plea tenders an immaterial issue.

Calvin C. Whitesell; Steiner, Crum & Baker, Attorneys for Plaintiff.

[File endorsement omitted]

[fol. 86]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

JUDGMENT OF THE COURT ON PLEADINGS—November 1, 1960

This matter coming on before the Court on the demurrers as last amended of each defendant, separately and severally, and each defendant being present in court by and through their respective counsel, and the plaintiff being in court by and through his counsel, and all parties having been heard by oral argument, and the Court having considered and understood the demurrer of each defendant as last amended, it is hereby Ordered and Adjudged that the demurrer as last amended of each defendant, separately and severally, to the complaint in this case be and the same is hereby separately and severally overruled.

And now comes the defendant The New York Times Company, a corporation, by and through its counsel, and files its Plea No. 1, being the plea of the general issue, and Special Pleas numbers 2-6, inclusive and the plaintiff joins issue on Pleas No. 1, and files his demurrer to Special Pleas numbered 2-6, inclusive, and to each said plea, sepa-

rately and severally, and counsel for The New York Times Company, a corporation, and plaintiff having been heard on plaintiff's demurrers to said Special Pleas and same being considered and understood by the Court, the Court is of the opinion that the demurrers are well taken, and accordingly it is Ordered and Adjudged That plaintiff's demurrers to Pleas 2, 3, 4, 5, and 6 are hereby sustained as to said pleas.

And now come defendants Ralph D. Abernathy, Fred L. Shuttleworth, S. S. Seay, Sr., and J. E. Lowery, each separately and severally, and plead in short by consent the general issue, with leave to give in evidence anything and everything that might be specially pleaded, as fully as if pleaded at length, with like leave to the plaintiff to reply in short by consent on any matter that may be set out by replication, as fully as if pleaded at length.

Done at Montgomery, this November 1, 1960.

Walter B. Jones, Circuit Judge.

[File endorsement omitted]

[fol. 87]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

MOTION OF RALPH D. ABERNATHY TO EXCLUDE PLAINTIFF'S EVIDENCE—Filed November 2, 1960

Now comes Ralph D. Abernathy, one of the defendants in the above entitled cause, and moves this Honorable Court to exclude all of the plaintiff's evidence introduced in this cause and as grounds therefor, assigns the following separately and severally:

1. That as a matter of law the plaintiff has failed to make out a prima facie case against this defendant.

2. That the evidence conclusively shows that this defendant did not publish, nor cause to be published, the article that appeared in the New York Times on March 29, 1960, which article is the subject of this suit.

3. That any recovery against this Defendant under the evidence as presented by the Plaintiff would violate the Fourteenth Amendment to the United States Constitution in that it would deprive this defendant of his property without due process of law.

4. The case as presented by the Plaintiff is so devoid of evidentiary support of the allegations alleged in the Complaint with reference to this Defendant, the plaintiff having failed to present any evidence upon which it could rationally be found that this defendant published the alleged defamatory matters complained of in the Complaint, that any verdict against this defendant upon the evidence introduced would deprive this defendant of due process of law in violation of the Fourteenth Amendment to the United States Constitution.

5. That the plaintiff has failed to make out a prima facie case against this defendant in that the plaintiff has failed to show any causal connection between the plaintiff, the alleged libelous ad which is the subject of this suit, and this defendant.

Respectfully submitted,

Fred D. Gray, 34 No. Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough St., Montgomery, Ala.;

Vernon Z. Crawford, 570 Davis Ave., Mobile, Alabama, By: Fred D. Gray,

Attorneys for named defendant.

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

MOTION OF FRED L. SHUTTLESWORTH TO EXCLUDE PLAINTIFF'S EVIDENCE—Filed November 2, 1960

Now comes Fred L. Shuttlesworth, one of the defendants in the above entitled cause, and moves this Honorable Court to exclude all of the plaintiff's evidence introduced in this cause and as grounds therefor, assigns the following separately and severally:

1. That as matter of law the plaintiff has failed to make [fol. 88] out a prima facie case against this defendant.

2. That the evidence conclusively shows that this defendant did not publish, nor cause to be published, the article that appeared in the New York Times on March 29, 1960, which article is the subject of this suit.

3. That any recovery against this defendant under the evidence as presented by the Plaintiff would violate the Fourteenth Amendment to the United States Constitution in that it would deprive this defendant of his property without due process of law.

4. The case as presented by the plaintiff is so devoid of evidentiary support of the allegations alleged in the Complaint with reference to this defendant, the plaintiff having failed to present any evidence upon which it could rationally be found that this defendant published the alleged defamatory matters complained of in the Complaint, that any verdict against this defendant upon the evidence introduced would deprive this defendant of due process of law in violation of the Fourteenth Amendment to the United States Constitution.

5. That the plaintiff has failed to make out a prima facie case against this defendant in that the plaintiff has failed to show any causal connection between the plaintiff, the alleged libelous ad which is the subject of this suit, and this defendant.

Respectfully submitted,

Fred D. Gray, 34 No. Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough, Montgomery, Alabama;

Vernon Z. Crawford, 570 Davis Ave., Mobile, Alabama;

Attorneys for Named Defendant.

[File endorsement omitted]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

MOTION OF S. S. SEAY, SR., TO EXCLUDE PLAINTIFF'S EVIDENCE—Filed November 2, 1960

Now comes S. S. Seay, Sr., one of the defendants in the above entitled cause, and moves this Honorable Court to exclude all of the plaintiff's evidence introduced in this cause and as grounds therefor, assigns the following separately and severally:

1. That as a matter of law the Plaintiff has failed to make out a prima facie case against this defendant.

2. That the evidence conclusively shows that this defendant did not publish, nor cause to be published, the article that appeared in the New York Times on March 29, 1960, which article is the subject of this suit.

3. That any recovery against this defendant under the evidence as presented by the plaintiff would violate the Fourteenth Amendment to the United States Constitution in that it would deprive this defendant of his property [fol. 89] without due process of law.

4. The case as presented by the Plaintiff is so devoid of evidentiary support of the allegations alleged in the complaint with reference to this defendant, the plaintiff having failed to present any evidence upon which it could rationally be found that this defendant published the alleged defamatory matters complained of in the complaint, that

any verdict against this defendant upon the evidence introduced would deprive this defendant of due process of law in violation of the Fourteenth Amendment to the United States Constitution.

5. That the plaintiff has failed to make out a prima facie case against this defendant in that the plaintiff has failed to show any causal connection between the plaintiff, the alleged libelous ad, which is the subject of this suit, and this defendant.

Respectfully submitted,

Fred D. Gray, 34 No. Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough, Montgomery, Alabama;

Vernon Z. Crawford, 570 Davis Ave., Mobile, Alabama.

[File endorsement omitted]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

MOTION OF J. E. LOWERY TO EXCLUDE PLAINTIFF'S EVIDENCE—Filed November 2, 1960

Now comes J. E. Lowery, one of the defendants in the above entitled cause, and moves this Honorable Court to exclude all of the plaintiffs evidence introduced in this cause and as grounds therefor, assigns the following separately and severally:

1. That as a matter of law the plaintiff has failed to make out a prima facie case against this defendant.

2. That the evidence conclusively shows that this defendant did not publish, nor cause to be published, the article that appeared in the New York Times on March 29, 1960, which article is the subject of this suit.

3. That any recovery against this defendant under the evidence as presented by the Plaintiff would violate the Fourteenth Amendment to the United States Constitution

in that it would deprive this defendant of his property without due process of law.

4. The case as presented by the plaintiff is so devoid of evidentiary support of the allegations alleged in the Complaint with reference to this defendant, the plaintiff having failed to present any evidence upon which it could rationally be found that this defendant published the allegedly defamatory matters complained of in the Complaint, that any verdict against this defendant upon the evidence introduced would deprive this defendant of due process [fol. 90] of law in violation of the Fourteenth Amendment to the United States Constitution.

5. That the plaintiff has failed to make out a prima facie case against this defendant in that the plaintiff has failed to show any causal connection between the Plaintiff, the alleged libelous ad which is the subject of this suit, and this defendant.

Respectfully submitted,

Fred D. Gray, 34 No. Perry St., Montgomery, Alabama;

Solomon S. Seay, Jr., 29 No. McDonough, Montgomery, Alabama;

Vernon Z. Crawford, 570 Davis Ave., Montgomery, Alabama, By: Fred D. Gray,

Attorneys for named Defendant.

[File endorsement omitted]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

MOTION OF J. E. LOWERY FOR SPECIAL FINDINGS—
Filed November 3, 1960

Comes now J. E. Lowery, one of the defendants, by and through his attorneys of record herein, and respectfully requests special findings of the issues in this cause, including but not limited to the following:

1. Whether the matters and things set forth in the advertisement entitled "Heed Their Rising Voices" were of and concerning the plaintiff?

2. Whether as a direct and proximate result of the advertisement complained of the plaintiff was injured in his "trade, profession, or business"?

3. Whether the defendant, or anyone acting for him or authorized by him, wrote the advertisement entitled "Heed Their Rising Voices"?

4. Whether the defendant, or anyone acting for him, in his behalf, or authorized by him published the advertisement complained of?

5. Whether this defendant had knowledge or notice that the advertisement complained of would appear in the March 29, 1960 edition of the New York Times, or any other edition thereof?

6. Whether this defendant had knowledge or notice that his name would appear on the advertisement complained of?

7. Whether this defendant, on to-wit: March 29, 1960 was a member of "The Committee to Defend Martin Luther King and the Struggle for Freedom in the South?"

8. Whether this defendant consented to the publication of the advertisement complained of?

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr., Vernon Z. Crawford, Attorneys for the Defendant, By: Solomon S. Seay, Jr.

[File endorsement omitted]

[fol. 91]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

MOTION OF RALPH D. ABERNATHY FOR SPECIAL FINDINGS—Filed November 3, 1960

Comes now Ralph D. Abernathy one of the defendants, by and through his attorneys of record herein, and respectfully requests special findings of the issues in this cause, including but not limited to the following:

1. Whether the matters and things set forth in the advertisement entitled "Heed Their Rising Voices" were of and concerning the plaintiff?

2. Whether as a direct and proximate result of the advertisement complained of the plaintiff was injured in his "trade, profession, or business"?

3. Whether the defendant or anyone acting for him or authorized by him, wrote the advertisement entitled "Heed Their Rising Voices"?

4. Whether the defendant, or anyone acting for him, in his behalf, or authorized by him published the advertisement complained of?

5. Whether this defendant had knowledge or notice that the advertisement complained of would appear in the March 29, 1960 edition of the New York Times, or any other edition thereof?

6. Whether this defendant had knowledge or notice that his name would appear on the advertisement complained of?

7. Whether this defendant, on to-wit: March 29, 1960 was a member of The Committee to Defend Martin Luther King and the struggle For Freedom in the South".

8. Whether this defendant consented to the publication of the advertisement complained of?

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr., Vernon E. Crawford, Attorneys for Defendant, By: Solomon S. Seay, Jr.

[File endorsement omitted]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

MOTION OF S. S. SEAY, SR. FOR SPECIAL FINDINGS—
Filed November 3, 1960

Comes now S. S. Seay, Sr., one of the defendants by and through his attorneys of record herein, and respectfully requests special findings of the issues in this cause, including but not limited to the following:

1. Whether the matters and things set forth in the advertisement entitled "Heed Their Rising Voices" were of and concerning the plaintiff.

2. Whether as a direct and proximate result of the advertisement complained of the plaintiff was injured in his "trade, profession, or business."

3. Whether the defendant, or anyone acting for him or authorized by him wrote the advertisement entitled "Heed Their Rising Voices"?

[fol. 92] 4. Whether the defendant, or anyone acting for him, in his behalf, or authorized by him published the advertisement complained of?

5. Whether this defendant had knowledge or notice that the advertisement complained of would appear in the March 29, 1960 edition of the New York Times, or any other edition thereof?

6. Whether this defendant had knowledge or notice that his name would appear on the advertisement complained of?

7. Whether this defendant, on to-wit: March 29, 1960 was a member of "The Committee to Defend Martin Luther King and the Struggle for Freedom in the South"?

8. Whether this defendant consented to the publication of the advertisement complained of?

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr., Vernon Z. Crawford, Attorneys for Defendant, By: Solomon S. Seay, Jr.

[File endorsement omitted]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

MOTION OF FRED L. SHUTTLESWORTH FOR SPECIAL FINDINGS—Filed November 3, 1960

Comes now Fred L. Shuttlesworth one of the defendants, by and through his attorneys of record herein, and respectfully requests special findings of the issues in this cause, including but not limited to the following:

1. Whether the matters and things set forth in the advertisement entitled "Heed Their Rising Voices" were of and concerning the plaintiff?

2. Whether as a direct and proximate result of the advertisement complained of the plaintiff was injured in his "trade, profession, or business"?

3. Whether the defendant, or anyone acting for him, in his behalf, or authorized by him published the advertisement complained of?

4. Whether the defendant or anyone acting for him, in his behalf or authorized by him wrote the advertisement entitled "Heed Their Rising Voices"?

5. Whether this defendant had knowledge or notice that the advertisement complained of would appear in the March 29, 1960 edition of the New York Times, or any other edition therefor?

6. Whether this defendant had knowledge or notice that his name would appear on the advertisement complained of?

[fol. 93] 7. Whether this defendant, on to-wit; March 29, 1960 was a member of "The Committee to Defend Martin Luther King and the Struggle for Freedom in the South?"

8. Whether this defendant consented to the publication of the advertisement complained of?

Respectfully submitted,

Fred D. Gray, Solomon S. Seay, Jr., Vernon L. Crawford, Attorneys for the Defendant, By: Solomon S. Seay, Jr.

[File endorsement omitted]

[fol. 94]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

STIPULATION WITH REFERENCE TO THE TRANSCRIPT OF THE RECORDS IN THE ABOVE STYLED CAUSES—
Filed November 23, 1960

Whereas each of the above styled causes now pending in the Circuit Court of Montgomery County, Alabama involve common questions of law and fact relating to the jurisdiction of that court over the person of The New York Times, a corporation; and

Whereas the case first styled above, namely L. B. Sullivan v. The New York Times Company, a corporation, et al. (hereinafter referred to as the Sullivan case) has been tried before this court, and the matter of the jurisdiction of that court over the person of The New York Times Company, a corporation, has been adjudicated in the Sullivan case in that court upon said defendant's Motion to Quash service of process had upon it in two manners or modes; and

Whereas, upon the hearing of such Motion to Quash service of process in the Sullivan case, oral and documentary evidence were adduced by both parties; and

Whereas, it is the sense of the parties to this stipulation that the hearings of the Motions to Quash service now pending in each of the other two cases above captioned (hereinafter referred to as the James and Parks cases) involve common questions of law and fact with those questions in the Sullivan case relating to the jurisdiction of the said Circuit Court; and

Whereas it is the intention of the parties hereto to relieve in every way feasible the physical burden which would be imposed upon both the trial court and any appellate court in the event of an appeal in any of said cases by a repetition of the taking and transcribing of the same oral and documentary evidence on this common question of law and fact relating to jurisdiction;

It Is Further Agreed by and between the parties hereto, through their attorneys of record in each of the above styled cases, as follows:

1. The parties hereto do hereby stipulate and agree that [fol. 95] the motions to quash service of process now pending in the James and Parks cases may be submitted on the evidence contained in the transcript of the proceedings on the motion of The New York Times Company to quash service of process in the Sullivan case.

2. It is further stipulated and agreed that upon a hearing of said motions to quash service of process in the James and Parks cases, either party hereto may introduce additional evidence by way of testimony or documents as either party may see fit so to do.

3. In the event of an appeal in any of the above styled cases, the transcript of that portion of the record in the Sullivan case pertaining to the motion to quash service will be considered a master record on the question of jurisdiction of the Circuit Court of Montgomery County, Alabama, over the person of The New York Times Company, a corporation, and it will not be necessary that a separate transcript be filed in the Supreme Court of Alabama in the event of an appeal in the James and Parks cases; and this master record may become a part of the transcript in the James and Parks cases by reference to said record as found and contained in the Sullivan case, together with any supplemental evidence addnced in accordance with paragraph 2 of this agreement.

4. The evidence on the motion to quash service of process in the Sullivan case was heard ore tenus by the trial court. It is the intent of this stipulation that the submission of the James and Parks cases to the trial court on the transcript of the proceedings on the motion to quash service of process in the Sullivan case in writing shall have the same force and effect as if heard ore tenus by the court in those cases.

5. The purpose and intent of this stipulation is physically to abridge the transcript of the record in the James

and Parks cases, without deleting the contents thereof, and treating the Sullivan transcript pertaining to the motion to quash in that case as a common transcript and part of the transcripts in the James and Parks cases by this agreement and by reference to said Sullivan transcript.

[fol. 96] 6. In each of the above styled cases, the defendant New York Times Company, a corporation, has filed special appearances expressly objecting to the jurisdiction of the Circuit Court of Montgomery County, Alabama over its person. By entering into this agreement, this defendant does not in any wise waive its said limited or special appearance, or consent to the jurisdiction of that court over its person, but maintains its express objections thereto. And the plaintiff, by entering into this agreement, does not waive the finding and judgment of the Circuit Court of Montgomery County, Alabama on August 5, 1960 in the Sullivan case that this said defendant has made a general appearance in that case.

Witness our hands and seals this 21st day of November, 1960.

L. B. Sullivan, Earl D. James and Frank W. Parks, Parties Plaintiff, by their respective attorneys of record:

Steiner, Crum & Baker, By: M. R. Nachman, Jr.

The New York Times Company, a Corporation, Party Defendant appearing specially for the purpose of objecting to the jurisdiction of the Circuit Court of Montgomery County, Alabama, by its Attorneys:

Beddow, Embry & Beddow, By: T. Eric Embry.

[File endorsement omitted]

[fol. 97]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

TRANSCRIPT OF PROCEEDINGS ON DECEMBER 16, 1960

Mr. Embry: Under our stipulation, we don't want to add any more evidence, if the Court please. We don't wish to do that but we are filing amendments to the Motion to Quash in the James and Parks cases and also under the stipulation we had originally and this stipulation. We want to add further grounds of objection to the questions propounded to the Sullivan witnesses and to the introduction of certain documents.

The Court: All of this is on the Motion to Quash?

Mr. Embry: Yes, Your Honor. Now, on the additional grounds of objection, I don't know how we can handle that physically unless it can be—on the additional grounds of objection I think it would be best to simply state for the Record those additional grounds with the understanding that those additional grounds apply in each place where an objection is made and grounds are assigned because on the original hearing we had various understandings throughout that we could add grounds. As far as re-typing this, I don't think that would be necessary if the Record will show that all of these additional grounds are treated as assigned as additional grounds to the objections where the objections were originally made.

Mr. Nachman: In the Sullivan case?

Mr. Embry: In the Sullivan case and this one too. I don't know whether I am making myself clear or not. Let me back track. I am thinking out loud, Your Honor. Now, on the hearing on the Motion to Quash in the Sullivan case we got into a long series of—particularly documentary evidence and then we got into a particular line of inquiry that grew out of that on Cross Examination of each of our witnesses and I am sure I don't have to point out what it was as these gentlemen will remember what I am talking about. During that time we had an understanding and a stipulation that appears in the transcript as to that. We objected and the stipulation was that that would be as to each question and answer an exception. Then we had a

stipulation that we could later assign additional grounds to [fol. 98] those already assigned and what we want to do on this hearing is to assign those additional grounds by stating the grounds and letting them appear in the Record and that it was done pursuant to the stipulation made at that time. That's the only way I know how to put it, Your Honor.

Mr. Nachman: Well, I just didn't know what objection you were referring to. We did have that stipulation and it seems to me, again thinking out loud, that the simplest way would be for you to write out the additional objections and let the Court Reporter show them as having been made and they will appear in the Master transcript.

Mr. Embry: Well, where do you think that should be done? Do you think it should be put into the front of the transcript or in the back or where?

Mr. Nachman: That's right. He has already transcribed it.

Mr. Embry: Should we add an additional sheet where each witness' testimony begins or what?

Mr. Nachman: Well, I should think that anything that appeared in the Record just so you could refer to it as being in the Record would suffice, wouldn't it?

Mr. Embry: Well, suppose if it is agreeable that under that original understanding that at the place where each witness' cross examination begins, we will have the Court Reporter put in an extra sheet—where the first objection is made we can let those additional grounds appear. If we can have that agreement, then that will be all we will want to do today, Your Honor. We will submit the case as we don't care to argue the Motion.

Mr. Nachman: (Nodding affirmatively) If the Court please, we move to strike the attempted amendment to the Motion to Quash Service in both cases as to Ground A which is the ground that asked that Ground 6 of the original Motion be stricken. Ground 6 of the prayer of the original Motion is the one to be stricken. We would like to assign these grounds and these authorities, Your Honor. Ground 6 of the prayer of the original Motion and I am reading, Your Honor, Ground 6 of the prayer of the original Motion [fol. 99] which is as follows: "That this Court dismiss this

action as to The New York Times Company, a corporation, for lack of jurisdiction of the subject matter of said action." Your Honor has held, as I am sure Your Honor will recall, in your order or opinion of August 5th, 1960—

The Court: Jurisdiction of the subject matter?

Mr. Nachman: Yes, sir. In Your Honor's Order of August 5th, 1960 in Sullivan against The New York Times which we have stipulated was submitted on the same Record that this case is being submitted on, Your Honor held that Ground 6 of the prayer of the Motion to Quash Service in the Sullivan case, the same language if not the same words, constituted a general appearance on the part of The New York Times. Now, we feel that the attempted amendment in the James and Parks cases now constitute an effort on the part of this defendant to withdraw what Your Honor has held to be a general appearance.

The Court: What does the amendment say?

Mr. Nachman: The amendment says that they amend the Motion to Quash in James and in Parks quote "by striking Ground 6 of the prayer of said Motion." Now, Ground 6 of the prayer is what I just read about no jurisdiction of the subject matter. Now, as authority for our Motion to Strike on this point we would like to cite Your Honor to Liseter against the C.I.T. Corporation—

Mr. Embry: Is that one of the cases you cited before?

Mr. Nachman: No, it is not. It is in 220 Ala. 19 at page 20 and the Southern citation is 152 So. 607. In that case, the Court below allowed the demurrer which constituted a general appearance to be withdrawn and a Plea in Abatement substituted for it and the Supreme Court of Alabama held that this was error and that there was no area of discretion in the Circuit Court in that matter. This is what they said. "We are of opinion that the defendant by entering a general appearance and filing a demurrer to the original complaint and allowing this general appearance to stand until the statute of limitation of one year had barred the plaintiff's action elsewhere irrevocably waived its right to plead in abatement and that the county in which the action was brought was not the proper venue. The facts [fol. 100] in this case bring it clearly within the rule

evolved in the following cases." Then there are three cases cited. The Supreme Court granted the certiorari to the Court of Appeals. It is, of course, true that the statute of limitations has not yet run in this case, but it is also true that by the time any Appellate review could be undertaken it would have run. I think that with this case coming on for trial in late January that it would be impossible for there to be any Appellate review in this case until after the statute of limitations had run. This Motion to Quash Service in the James case and Parks case—

The Court: What is the statute? One year or—

Mr. Nachman: Yes, sir. The Motion to Quash Service in this case has been on file since we were served, as the Motions show, on the 20th of May of this year in both cases and we feel that it would be prejudicial to allow them to try to do what is, in effect, a withdrawal of what Your Honor has held to be a general appearance and we do not think they are entitled to do this and we think that would be in effect a striking of Ground 6 of these Motions, and we rely on the authorities which I have just cited to Your Honor. There are three other cases which are cited in the portion of the Liseter case which I read. As to the other grounds which are under the heading of "D", they are grounds numbered from 28 to and including 62. We think that there, there is, as there is not, we submit, as to "A" and that the Court has a considerable area of discretion and we certainly concede that but we do feel that to present us with whatever the arithmetic of 28 through 62 is—thirty-four additional grounds on the day of submission when this Motion to Quash Service has been on file in this Court since May 20th and when Your Honor took submission and heard lengthy arguments on the Sullivan case in late July and that when Your Honor ruled in August that to present us on the morning of the hearing with thirty-four additional grounds raising questions such as going to the Commerce Clause and freedom of speech and other sections of the Alabama Code—we think that is unduly prejudicial and burdensome and we submit that due diligence on the part of counsel for The New York Times certainly required that we be presented with these things before today

[fol. 101] and we do not think there should be a submission on these additional grounds and we do not think the Court should permit their addition to the original Motion to Quash but, as I say, we think there is a considerable area of discretion with Your Honor on that point. But as I said, under the Liseter theory, there is no such discretion in regard to striking Ground 6 in the prayer.

Mr. Embry: Your Honor, I might say this: If there is some action they wish to take because of the additional grounds, we would be most willing to have a continuance of this hearing until some other date.

The Court: Well, what do they cover?

Mr. Nachman: Well, Your Honor, Mr. Embry could probably tell you better than I can.

Mr. Embry: Your Honor, they are more specific elaborations on the grounds in the original Motion having to do with Constitutional questions relating to this statute in the service of process.

The Court: That is the proposition of the service of process on the Secretary of State?

Mr. Embry: Yes, sir. And also on the purported agent. In the original Motion we had some grounds with respect to the constitutional questions that we wanted to raise but these are further elaborations and additional grounds on that under the Constitution of Alabama and the Constitution of the United States.

The Court: Is there any new matter or is it just an elaboration of what is already on hand?

Mr. Embry: Well, Your Honor, I think that would be a matter of interpretation. We don't consider it new matter but you might take that view. It is stated differently and some additional sections of the Constitution of Alabama have been added and of the Constitution of the United States but, as I said, if there is some action they wish to take about it—

The Court: Well, they claim you had this here since May 20th.

Mr. Embry: We would be happy to have a continuance [fol. 102] of this if there is something—in other words, if there is something they want to do about the additional

grounds—I don't know what it would be on a Motion to Quash and they are just additional grounds under the same evidence but if there is some action they wish to take about it, of course, a continuance would afford them that opportunity.

The Court: Let me make this suggestion. Unless somebody wants to argue some more, I am pretty clear that you cannot withdraw that ground No. 6. I don't believe you can strike that out. Now, on these other things, they might want a few days to read them over and study them and I see no objection to that. If you want to submit the whole thing today, it will be agreeable with the Court. It is sort of within the discretion of the Court and I will let in this 28 through 62 but I am absolutely clear that you can't strike out paragraph 6 and I will so rule.

Mr. Nachman: Your Honor, could my statement on our Motion be—

Mr. Embry: We except to the Court's ruling. Let the Record show an exception to that ruling, Mr. Reporter.

Mr. Nachman: Your Honor, could my statement to the Court Reporter as to our Motion to Strike be transcribed and be considered as a written Motion?

Mr. Embry: Certainly. I don't think you have to make a written Motion but if you want it that way then it is all right with me.

Mr. Nachman: Well, the Court Reporter's transcription of my statement will constitute a written Motion then.

The Court: Yes.

Mr. Embry: Your Honor, would you note in your order —would you note our exception which would save me the necessity of filing a written exception on your ruling on the Motion to Quash?

The Court: Yes.

[fol. 103] Mr. Embry: Under the stipulation and agreements had throughout the hearing on the Motion to Quash in the L. B. Sullivan case wherein it was agreed that counsel for The New York Times Company could assign any additional grounds of objections to questions propounded to the various witnesses and to the introduction of documentary evidence that they saw fit to do, such stipulation being for

the purpose of saving the Court's time on the original hearing, the defendant, The New York Times Company wishes to and does assign the following additional grounds of objection. To each objection made originally to questions propounded to the witnesses and the introduction of documentary evidence, that the questions called for a mental operation of the witness and not facts and that the questions called for an answer which does not tend to prove or disprove whether Don McKee and John Chadwick were agents of The New York Times Company so that purported service upon McKee would constitute valid service upon this defendant. It does not tend to prove whether or not The Times did business in Alabama or whether the cause of action attempted to be stated in the complainant's cause accrued from or was incident to the doing of business or performance of work or service in Alabama by The New York Times Company or its agents, servants or employees and that these same grounds of objection apply to the introduction of the various exhibits offered by the Plaintiff. Further grounds of objection to questions propounded to the various witnesses as well as to the introduction of documentary evidence are that the question and the evidence sought to be adduced by an answer thereto and the documents would not be material or legal evidence such as would authorize a construction by the Court of Section 199 (1) of Title 7, Code of Alabama, 1940, that would permit the Court to assert jurisdiction over the person of The New York Times Company, a corporation, and to admit such evidence for such purpose would be such a misapplication of the law as would deprive this defendant of its property without due process of law in contravention or violation of the Fourteenth Amendment of the Constitution of the United States and in contravention or violation of Article 1, Section 6, of the Constitution of Alabama, [fol. 104] 1901, and would deny to this defendant equal protection of the law in contravention or violation of the Fourteenth Amendment of the Constitution of The United States and would constitute an abridgement of freedom of the press in contravention or violation of the First Amend-

ment to the Constitution of the United States, taken together with the Fourteenth Amendment of the Constitution of the United States and would impose an unreasonable burden upon Interstate Commerce in contravention or violation of Article I, Section 8 of the Constitution of the United States and such questions and the evidence sought to be adduced therefrom and such documents would be illegal and immaterial as a basis for the Court construing or holding that Don McKee was an agent of this defendant upon whom service of process might be had so as to support a holding by the Court that any purported service upon him would subject this defendant to the jurisdiction of this Court and the admission of such evidence and the holding on the basis of such evidence that he was an agent so as to subject this defendant to the jurisdiction of this Court, would deprive this defendant of its property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States and in violation of Article I, Section 6 of the Constitution of Alabama, 1901, and would deny to this defendant equal protection of the law in violation of the Fourteenth Amendment of the Constitution of the United States and would abridge freedom of the press in violation of the First Amendment to the Constitution of the United States, taken together with the Fourteenth Amendment of the Constitution of the United States and would impose an unreasonable burden upon Interstate commerce in violation of Article 1, Section 8 of the Constitution of the United States.

[fol. 105]

IN CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

At Law

Case No. 27416

L. B. SULLIVAN, Plaintiff,

vs.

THE NEW YORK TIMES COMPANY, a Corporation; RALPH D. ABERNATHY, FRED L. SHUTTLESWORTH, S. S. SEAY, SR., and J. E. LOWERY, Defendants.

Transcript of Proceedings on Motion to Quash

BEFORE: HON. WALTER B. JONES, Circuit Judge, Presiding at the Court House, Montgomery, Alabama, Monday, July 25th, 1960, Tuesday, July 26th, 1960 and Wednesday, July 27th, 1960.

APPEARANCES:

For the Plaintiff: (L. B. Sullivan)

Messrs. Steiner, Crum & Baker, Attorneys at Law, Montgomery, Ala. By: S. R. Baker, Esq., Robert Steiner, III, Esq., M. R. Nachman, Jr.

Messrs. Scott, Whitesell & Scott, Attorneys at Law, Montgomery, Ala. By: Calvin M. Whitesell, Esq.

For the Defendant: (The New York Times Company)

Messrs. Lord, Day & Lord, Attorneys at Law, New York, N. Y. By: Louis M. Loeb, Esq. and Ronald S. Diana, Esq.

Messrs. Beddow, Embry & Beddow, Attorneys at Law, Birmingham, Ala. By: Roderick Beddow, Esq., T. Eric Embry, Esq., and Roderick M. MacLeod, Esq.

[fol. 105a]

MOTION TO FILE AN AMENDMENT TO MOTION TO QUASH, COURT'S RULING AND EXCEPTION THERETO

Mr. Embry: If the Court please, we have an amendment to the Motion we would like to file in Open Court.

The Court: Very well. Let the Record so note. I shall be glad to hear you, gentlemen.

Mr. Embry: Your Honor, we take the position that the burden is on the plaintiff to go forward in this matter having filed a sworn Motion to Quash which overcomes the prima facie correctness or validity of the service which was purported to have been obtained under the provisions of Section 199 (1), Title 7 primarily for the reason, as we view it, that the statute which would attempt to extend the jurisdiction of the Court to a foreign corporation under certain conditions which are set out in that statute that for the purpose of that statute and the Court being under that statute a Court of limited jurisdiction where the plaintiff must satisfy the Court that it comes within the purview of that statute in order to establish that the Court has jurisdiction to proceed with the trial of the case subjecting the foreign corporation to its jurisdiction. Of course, when they make the affidavit initially and the Sheriff serves a summons on the Secretary of State, at that moment, probably prima facie, it would show service but when the sworn motion denying the facts as set forth in the affidavit of the plaintiff is filed, as we view the matter, that overcomes that prima facie correctness and shifts to the plaintiff the burden of satisfying the Court of the fulfillment of the conditions imposed by the statute, that the cause of action accrued from the performance of some act or the performance of some work or service in the State by the foreign corporation or its agents or servants out of which the cause of action sued on in the Complaint accrued. Now, this particular question—I am satisfied in my own mind hasn't been passed on in the State of Alabama—

The Court: This would be a case of first impression. Is that what you would call it?

Mr. Embry: Yes, I think so, Your Honor. That is our view of it, Your Honor. We have one case which indicates

that is not under this statute and as a general proposition is found in 102 Sou. 19. That is where the guts of it is. That is where the Sheriff's return showed execution of [fol. 105b] process on an officer of the defendant corporation which had been overcome by the filing of the defendants' special plea in that case rather than a Motion being sworn to. The Court took the position that the burden existed to show the jurisdiction of the Court after that was done as being upon the plaintiff and we feel that there is no difference in that one when compared to this. This statute has a very limited field of operation and to come in here the plaintiff must satisfy the requirements of 199 (1) that he has undertaken to travel under. I will leave it up to Your Honor to decide whether I am correct or not.

The Court: All right. I will hear from the other side.

Mr. Nachman: If the Court please, I don't think it necessary to go into the question of whether this Court is a statutory Court or a constitutional court. I have always assumed that it was and I know Your Honor knows the extent of your powers and I see no need to cite authority on that. We disagree not only with the statements Mr. Embry made about the burden of proof but we disagree also with the authorities he cited in support of his statement. There is nothing in the substituted service statute as we read them and there was nothing in Mr. Embry's argument to show otherwise that the ordinary rule of procedure whereby a person who moves the Court has the burden of proof in support of the facts on which he relies for his Motion or that those ordinary rules should be abrogated in a case such as this because there is substituted service on a foreign corporation which we have by affidavit stated was doing business in Alabama. The case Mr. Embry cited makes it quite plain that the Alabama Supreme Court is not holding that the burden is on the plaintiff to prove that a foreign corporation does business in the State of Alabama. They say that once the regular matters incident to service have been shown, namely, service by the Sheriff and a return and the ordinary matters which are contained in a service and return, that that is the end of it and the Court, as I say, in that case makes it perfectly plain that they are not holding that where

there was a special plea as was filed in that case that the plaintiff has the burden of proving all of the business op-
[fol. 105c] erations of this company. Now, there is also, we respectfully submit, authority in 199 (1). That case is Ex Parte Smith, 258 Ala. 319. That is a non-resident motorist case. Another is in 266 Ala. which is a later case which applied to the non-resident motorist situation and to substituted service against foreign corporations which do business in this State. Justice Foster in that case on page 323 in 258 Ala. Reports said, "In order for such service to be sufficient under the provisions of that statute there are certain steps necessary: (One) Service of a process shall be made by the Sheriff leaving three copies of it with the Secretary of State, together with a fee of three dollars; (Two) Forthwith the Secretary of State shall send by registered mail to the defendant a copy of the summons and complaint with a demand for a return receipt, and shall make a certificate which shall be filed in the office of the Clerk of the Court in which the action is pending, showing the date of the mailing of such registered letter containing a copy of the summons and complaint, and the date of the receipt of the return card. The certificate must be signed by the Secretary of State. When those matters appear of Record in the cause they show on the face of the proceeding a sufficient service on the defendant to support a personal judgment against him as if personally served within the State." Moreover, we not only obtained service under the substituted service statute, we also obtained personal service by having the Sheriff serve directly one Don McKee as agent of The New York Times. That service was also accomplished in this case. We say on both grounds we have taken care of any prima facie burden that exist on us under this Ex Parte Smith to establish regularity of the service in this case. I have in my hand here the original complaint which shows the Sheriff's return and it reads as follows: "Executed by serving three copies of the within summons and complaint on Betty Frink as Secretary of State of Alabama for defendant, The New York Times. 4-21-60. Also a copy on Don McKee as agent for The New York Times and further executed by serving"— That is not involved in this ar-

gument. Now, Your Honor, their Motion to Quash says they don't do business in Alabama. Our affidavit says they do. They have moved to quash service on the grounds [fol. 106] that they don't do business in Alabama and we respectfully submit that since it is their motion that they have the burden of going forward with the evidence to prove the facts they set out in their motion and we are certainly prepared this morning to meet by our evidence any evidence which they may submit in that regard. We also are prepared to show to the Court at an appropriate time that by their acts in this case that they have made a general appearance in this cause and have waived any special appearance on jurisdictional grounds.

Mr. Embry: Your Honor, I would like to call the Court's attention to the opinion in Burch vs. Ingham Lumber Company in 102 Sou. 19, where the Court had this to say. "That the prima facie effect of the Sheriff's return, showing the execution of the process on an officer of the defendant corporation had been overcome, and that the original burden in that behalf had been revived, that burden is imposed and exists, irrespective of a special plea to the jurisdiction." That's all the Court said about it, Your Honor.

The Court: Under the facts of the case as shown here, I believe that the burden on the Motion to Quash would rest on the defendants and that is the ruling of the Court. You may proceed, gentlemen.

Mr. Embry: We would like the Record to note an exception to Your Honor's ruling.

The Court: Very well. Proceed.

Mr. Embry: Before proceeding with the taking of testimony, I would like to ask opposing counsel if there is any contention—if it can be stipulated for the Record that The New York Times is a foreign Corporation?

Mr. Nachman: We have said that it is in our affidavit.

Mr. Embry: Well, I believe that is true but I don't know whether that is actually in evidence. I don't know whether the law would treat it as being in evidence or not.

Mr. Nachman: We will stipulate that it is incorporated in the laws of New York, is it not?

Mr. Embry: Yes.

Mr. Nachman: And not qualified to do business in the State of Alabama. Is that correct?

Mr. Embry: Yes, sir.

Mr. Nachman: Now, before we start on the testimony—I don't know whether Mr. Martin of the Western Union Company is here or not but we have subpoenaed some documents from him and I wonder if we could stipulate as to whether the documents that he will bring are the documents regularly kept by the telegraph company in the course of busi-[fol. 107] ness of the company so that he will not have to wait—

Mr. Embry: Oh, yes.

Mr. Nachman: I don't know whether he is here or not but—

Mr. Embry: Well, of course, if we can see them first—

Mr. Nachman: Well, we will wait until he gets here then. I just wanted to have an understanding on that.

The Court: Go ahead.

Harold Faber, having been duly sworn, was called as a witness for the Defendant and testified as follows:

Direct examination.

By Mr. T. Eric Embry:

Q. What is your name, sir?

A. Harold Faber. That is spelled F-a-b-e-r.

Q. Mr. Faber, where do you reside, sir?

A. At Pleasantville, New York.

Q. Are you employed by The New York Times Company?

A. Yes, sir. I am.

Q. How long have you been employed by that concern?

A. Since 1940.

Q. What is your present title or designation of employment with The New York Times.

A. I am the day National News Editor.

The Court: What?

The Witness: I am the day National News Editor, sir.

By Mr. T. Eric Embry: (Continuing)

Q. How long have you occupied that position, sir?

A. Since 1952.

Q. In connection with your duties as the day National News Editor, do you have occasion to deal with individuals [fol. 108] whom you term and designate as stringers or string correspondents?

A. Yes, sir.

The Court: Could we have a definition of a "string correspondent?"

Mr. Embry: Yes, Your Honor.

By Mr. T. Eric Embry: (Continuing)

Q. Before I ask you about string correspondents in detail, I will ask you this. By what sources do you as the day National News Editor of The New York Times Company—by what sources does the New York Times Company gather news together?

A. We gather the news—we receive the news from the wire services, the Associated Press and the United Press. We receive regular reports from our staff correspondents in the United States and elsewhere and we receive reports occasionally from our string correspondents.

Q. What is a string correspondent with regard to that means of The New York Times Company gathering news through or by means of string correspondents? What do you call a string correspondent?

A. A string correspondent is generally a person who works for another newspaper or news agency upon whom we call for news occasionally or who calls us to offer news occasionally.

Q. From and since the first day of January, 1960 were there any individuals or persons in the State of Alabama whom you referred to or designated as string correspondents, who from time to time or on any occasion, have sold to you, news from within the State of Alabama?

A. I think so, yes.

Q. Since January 1st, 1960, have you purchased any news stories or news from any such persons in the State of Alabama?

A. Yes.

Q. Do you know the names of any of those persons or who they are that you have purchased news stories from?

A. Mr. John Chadwick in Birmingham and Mr. Don McKee in Montgomery.

Q. Is Mr. McKee an employee of The Montgomery Advertiser?

[fol. 109] Mr. Nachman: Your Honor, we object to that. It calls for a conclusion.

The Court; Well, it might be a shorthand rendention—you can go into it on cross examination. You may have an exception.

Mr. Baker: We except, if the Court please.

Mr. Embry: You may answer.

The Witness: Yes, he is.

Mr. Nachman: Your Honor, may we interrupt for a moment? We have the Manager of the Western Union Company here with some documents and he is the only man down there and he has to go back and we want to see whether we can stipulate that the documents he has with him are regular records of the company so that he may go back to his business.

The Court: All right. Go ahead.

Mr. Nachman: We want to stipulate for the Record that Mr. J. W. Martin, Manager of the Montgomery office of the Western Union Telegraph Company, was issued a subpoena duces tecum by the Plaintiff with regards to telegraphic communications sent by Don McKee from Montgomery to The New York Times Company in New York. In response to that subpoena Mr. Martin has brought with him two telegrams. I have checked with the counsel for defendant, New York Times, and as I understand the stipulation, we are stipulating that they are regular records of the Western Union Telegraph Company and kept in the regular course of business of the Western Union Telegraph Company and are not objectionable on that ground.

Mr. Embry: But, Your Honor, without waiving any objection as to the admissibility as to the content or—

The Court: Yes. Subject to all legal objections.

Mr. Nachman: Yes, Your Honor.

The Court: Go ahead.

By Mr. T. Eric Embry: (Continued)

Q. Is Mr. Chadwick an employee of South Magazine in Birmingham, Alabama?

A. Yes, sir.

[fol. 110] Mr. Baker: Your Honor, we doubt that he is competent to testify as to whether a man is an employee of a corporation located in Alabama.

The Court: Well, I believe it is a shorthand rendention and I will give you an exception and on cross examination you may go into whether he knows or not. If he doesn't know, we will throw it out.

Mr. Baker: We except, if the Court please.

By Mr. T. Eric Embry: (Continuing)

Q. Are either one of those individuals, or have they been at any time since the 1st day of January, 1960, an employee of The New York Times Company?

Mr. Baker: Same objection, if the Court please.

The Court: What was that question again?

Mr. Embry: My question was, were they or have they been since January, 1960 employees of The New York Times Company.

The Court: Well, if he hires them or has some knowledge of it he could testify, otherwise, I don't believe he could. Do you have anything to do with engaging or employing correspondents in Alabama or people who work for you if any at all?

Mr. Embry: There is no engaging at all, Your Honor. He is the one that deals—

The Court: Well, you will have to lay a little more predicate there.

By Mr. T. Eric Embry: (Continuing)

Q. Are you the person with The New York Times Company who would have any dealings with any string correspondents in Alabama if there were any in Alabama and I believe you testified that there are two?

A. Yes, sir. I am.

Q. Since the 1st day of January, 1960, have either Mr. Don McKee or Mr. Chadwick been employees of The New York Times Company?

[fol. 111] Mr. Baker: We object—

Mr. Nachman: We object to that, if the Court please. The word "employee" is a legal phrase—

The Court: Well, couldn't you just ask if he has done anything—

Mr. Embry: I can, Your Honor, but I believe I am entitled to show from the man they contend hired them and they contend that they are employees and now they object—

The Court: Well, Mr. Nachman is upset because you might be usurping a function of the Court by calling them employees. Couldn't you just go into what their relationship with him was or something like that?

Mr. Embry: All right, Your Honor. We except. We will go into the details, Your Honor.

By Mr. T. Eric Embry: (Continuing)

Q. Mr. Faber, have you had any business transactions with either of those two gentlemen since the first day of January, 1960?

A. Well, I have had transactions with them. Yes, sir.

Q. What have you done with respect to John Chadwick during 1960?

A. On several occasions I got in touch with Mr. Chadwick and asked him to file stories to me or to The New York Times and on several occasions Mr. Chadwick got in touch with me on his own initiative and suggested stories and I either accepted or refused them.

The Court: By telephone or telegraph or what means of communication?

The Witness: Basically by telephone, sir.

By Mr. T. Eric Embry: (Continuing)

Q. Can you give his Honor your judgment as to about how many occasions you have done what you have just described with Mr. Chadwick during 1960—from the 1st day of January, 1960 until the 26th day of April, 1960?

A. Well, there were several occasions but I don't know [fol. 112] the number of them.

Q. Would it be as many as six occasions?

A. Possibly six, yes, sir. Something of that nature.

Q. Did you purchase from him on either of these occasions any news stories?

A. Yes, sir. I did.

Q. Did you pay for those news stories?

A. Yes, sir.

Q. Do you have any rate by which they were paid for? Do you have any method by which you compute the amount of money you pay for those news stories?

A. Yes, sir. We have a basic rough rate of about a penny a word which we pay for our news stories.

Q. Now, on each of those occasions, whether you were contacted by Chadwick or whether you contacted Chadwick, were the news stories offered to you—to The New York Times Company, your paper, were they offered to you by Mr. Chadwick?

A. On the occasions when Mr. Chadwick got in touch with me, yes. On the other occasions I asked for a story and he usually accepted. Yes, sir.

Q. Now, on occasions when he contacted you and offered you a story, did you,—I believe you testified that the total of these was approximately six occasions. A. Yes.

Q. Did he send to you some written material which we will describe as a news story? Is that what took place?

A. Yes, sir.

Q. Now, upon receipt of any written material, did you either accept it or reject it on those occasions you testified about?

A. Yes, sir.

Q. On those occasions where you accepted it, what did you do with regards to payment for that?

A. A duplicate copy of it is sent to the auditing depart- [fol. 113] ment which keeps records of all the stories sent in by Mr. Chadwick and others and at the end of the month they send it back to me for authorization of payment.

Q. Was payment made to him for those news stories which you accepted?

A. Yes, sir.

Q. By what means was payment made? By that I mean was it made by check, money order or draft—

A. Check.

Q. A check drawn to the order of the recipient, Mr. Chadwick?

A. I assume so. Yes, sir.

Q. And on the New York Times Company?

A. Yes, sir.

Q. All right. From that compensation, I will ask you to state whether or not on those occasions when you did buy news stories from him, were any deductions from that amount of money made by way of withholding or income tax or Social Security tax, insurance contributions of any type or kind such as are normally deducted from the checks that are paid to you and other employees of The New York Times?

Mr. Nachman: We object to that question, Your Honor. We object to the latter part of it "such as are normally deducted for employees of The New York Times."

Mr. Embry: Well, first let me—

Mr. Nachman: All you have to do is ask him whether he deducted or not—

Mr. Embry: Well, let me do my own questioning if you don't mind.

Mr. Nachman: Well, quit leading him.

Mr. Embry: Well, you may address yourself to the Court, Mr. Nachman—

The Court: Gentlemen, all of you should address your remarks to the Court. If you object to it on the grounds that it is a leading question—

Mr. Baker: We object to it on the grounds that it is a leading question, Your Honor.

[fol. 114] The Court: Well, I think—

Mr. Beddow: I know that Your Honor likes to proceed with decorum and we want to proceed in the way and manner you would have us to and we don't want any such conduct manifested toward us and we want to put it on the line now in the beginning. That is not the way for counsel to address other counsel—

The Court: Well, I think I understand—

Mr. Beddow: And we resent it, Your Honor.

The Court: Well, everyone address their remarks to me and we will get along all right. I think the latter part of the question might be bad and I sustain the objection. Go ahead.

By Mr. T. Eric Embry: (Continuing)

Q. Were any deductions made from the amount computed for the payment of those news stories?

A. No, sir.

Q. Now, as an employee of The New York—

The Court: Let me ask it this way. Say a fellow sent in some words and wants twenty-five dollars and you accepted that and everything, in other words, would you just send him a check for twenty-five dollars for that particular news story?

The Witness: No, sir. A check is sent out at the end of the month. All stories are paid for at the end of the month.

The Court: All right. Go ahead.

By Mr. T. Eric Embry: (Continuing)

Q. Is that the method by which the amount is computed for all the stories which you may have purchased during that month?

A. Yes, sir.

Q. As I understand it, no deductions are made from that amount so computed?

A. Yes, sir.

Q. Now, as an employee of The New York Times Com-
[fol. 115] pany I assume that you are paid some sort of compensation.

A. Yes, sir.

Q. I assume further that it is on some sort of periodic basis.

A. A weekly check.

Q. A weekly check. Now, from the checks that you receive as compensation from The New York Times Company, are any deductions made therefrom?

A. Yes, sir.

Q. Will you relate to His Honor some of the deductions that are made from those checks?

A. Yes, sir. Federal Income Tax, New York State Income Tax, a pension plan, hospitalization and Social Security.

Q. Do you have anything left?

A. A little bit.

Q. Were any of those deductions that you have just described at any time during the period that I have specified deducted from the checks that were sent to Mr. Chadwick in payment for the news stories that you testified you purchased from him?

A. No, sir.

Q. Now, Mr. Faber, from the 1st day of January, 1960 until and including April 26th, 1960, did you have occasion to purchase from Mr. McKee of The Montgomery Advertiser any news stories?

A. Yes, sir.

Q. Can you give His Honor your judgment as to about how many occasions you purchased stories from him?

A. Very few. Possibly two or three at the most.

Q. Were they paid for in the same manner and at the same rate and on the same basis you testified that payment was made to Mr. Chadwick for the stories that he sold?

A. Yes, sir.

Q. Now, you have indicated and I will ask you whether it is a fact that on occasions that you have testified about that stories were forwarded to you or submitted to you by Mr. Chadwick and I will first confine my question to him —that were not by you accepted? Is that correct?

[fol. 116] A. Yes, sir.

Q. Now, what do you mean? Do you mean that they were not run in the paper?

A. Well, I think I mean two things. One, sometimes they offered a story and I said, no, we don't want it and he didn't send it and on another occasion he may have sent a story which we just didn't print in the paper.

Q. All right. Now, did you make any payment for those stories which were not accepted?

A. We paid for all the stories we asked for. I mean, if he called and offered a story and I turned him down, we would not pay for that.

Q. But you paid for that which you requested whether you used it or not.

A. Yes, sir.

Q. Was that true with respect to Mr. McKee also?

A. Yes, sir.

Q. On the couple of occasions that you dealt with him and on the six occasions that you testified you dealt with Mr. Chadwick.

A. Yes, sir.

Q. Now, I assume and I will ask you to state if it is a fact whether or not during the same period of time that I have specified, the 1st day of January, 1960 through April 26th, 1960, there appeared in The New York Times newspaper a story or stories relating to news events which had occurred within the State of Alabama?

A. Yes, sir.

Q. Now, you testified that you gathered news by means of the wire services, The Associated Press and the United Press, and that the news is sold to you by stringers which you have already described and that you have staff correspondents. Is that correct?

A. Yes, sir.

Q. Do you have any staff correspondent or employee of the news department of The New York Times that resides in Alabama? During this period of time I have been talking about now.

[fol. 117] A. No, sir.

Q. Do you know whether any staff correspondent or employee of the New York Times has come into the State of Alabama within the period that I have asked you about?

A. Yes, sir.

Q. Do you know who that man might be?

A. Well, there were two of them. Mr. Claude Sitton and Mr. Harrison Salisbury.

Q. Do you know on what occasions Mr. Claude Sitton came into the State of Alabama from January 1st, 1960 to April 26th, 1960?

A. I don't remember the specific stories, no.

Q. Do you know how many times he came into the State?

A. It may have been once or twice.

Q. What about Mr. Salisbury?

A. Mr. Salisbury came in once during April.

Q. How many staff correspondents does The New York Times have on its payroll as regular employees of The New York Times?

A. About two hundred fifty.

Q. In other words, of those two hundred fifty staff correspondents, how many staff correspondents reside—let me strike that question. You have indicated that you had one of those gentlemen named, Sitton. Claude Sitton. Is that correct?

A. Yes, sir.

Q. What do you call him?

A. He is our Southern correspondent.

Q. Where does he reside?

A. In Atlanta, Georgia.

Q. Does he have delineated by you a geographical area which it is his duty to within that area cover the news for The New York Times Company?

A. Yes, sir.

Q. Can you tell the Court the extent of that area and what it embraces?

A. Generally the Southern States. Virginia, North Carolina, South Carolina, Georgia, Florida, Kentucky, Tennessee, Alabama, Mississippi, Arkansas and Louisiana.

[fol. 118] Q. Within that area, is he the only one of the approximately two hundred and fifty staff correspondents employed by The New York Times who resides within that area and whose duty it is to cover news within that area?

A. Yes, sir.

Q. Does he have any regular, systematic schedule by which he enters the State of Alabama periodically on a fixed plan basis?

A. No, sir.

Q. Is it his duty to go into any of those places when and if news event occur that he deems are sufficiently newsworthy to cover?

Mr. Nachman: We object to the leading, if the Court please. We have tried to be patient but—

The Court: That question might be construed to be leading, yes.

By Mr. T. Eric Embry: (Continuing)

Q. What are his duties with respect to the States embraced within the geographical area to which he is assigned which you have described?

A. He is to cover news events within those States whenever we send him to cover such events.

Q. When do you send him to cover those events?

A. Well, whenever we think there are some news events going on of sufficient importance to merit his attention.

Q. Do you have a pre-planned schedule by which you send him from place to place?

A. No, sir.

Q. Does your news department maintain in the State of Alabama any office?

A. No, sir.

Q. Does it rent or lease or own any real estate in the State of Alabama?

A. No, sir.

Q. Does it have any bank account in the State of Alabama?

A. No, sir.

[fol. 119] Q. Do you have any listing for mailing address, telephone, cable or other communication address within the State of Alabama?

A. We have a listing of the stringers names and phone numbers and addresses.

Q. I mean, The New York Times Company.

A. No, sir.

Q. You said you had a listing of stringers. You have their names in your files in New York?

A. Yes, sir.

Mr. Baker: We object to the leading, if the Court please.

The Court: Yes. You will just have to tell what they do up there.

By Mr. T. Eric Embry: (Continuing)

Q. Is Mr. Chadwick or Mr. McKee listed in the telephone directories of the Cities of Birmingham and Montgomery respectively as a representative of The New York Times, listing along with their names The New York Times representative?

A. I don't know.

Mr. Baker: We think the directories would be the best evidence, if the Court please.

The Court: Well, I think that would be admissible. I give you an exception.

Mr. Embry: Mr. Reporter, did you get that answer?

The Reporter: Yes, sir. The witness answered, "I don't know."

The Witness: That's right. I don't know.

By Mr. T. Eric Embry: (Continuing)

Q. Do you have any contract of employment between The New York Times Company and either McKee or Chadwick?

A. No, sir.

Q. All right, sir. That's all.

[fol. 120] Mr. Embry: Under the stipulation and agreements had throughout the hearing on the Motion to Quash in the L. B. Sullivan case wherein it was agreed that counsel for The New York Times Company could assign any additional grounds of objections to questions propounded to the various witnesses and to the introduction of documentary evidence that they saw fit to do, such stipulation being for the purpose of saving the Court's time on the original hearing, the defendant, The New York Times Company, wishes to and does assign the following additional grounds of objection. To each objection made originally to questions propounded to the witnesses and the introduction of documentary evidence, that the questions called for a mental operation of the witness and not facts and that the questions called for an answer which does not tend to prove or disprove whether Don McKee and John Chadwick were agents of The New York Times Company so that purported service upon McKee would con-

stitute valid service upon this defendant. It does not tend to prove whether or not the Times did business in Alabama or whether the cause of action attempted to be stated in the complainant's cause accrued from or was incident to the doing of business or performance of work or service in Alabama by The New York Times Company or its agents, servants or employees and that these same grounds of objection apply to the introduction of the various exhibits offered by the Plaintiff. Further grounds of objection to questions propounded to the various witnesses as well as to the introduction of documentary evidence are that the question and the evidence sought to be adduced by an answer thereto and the documents would not be material or legal evidence such as would authorize a construction by the Court of Section 199(1) of Title 7, Code of Alabama, 1940, that would permit the Court to assert jurisdiction over the person of The New York Times Company, a corporation, and to admit such evidence for such purpose would be such a misapplication of the law as would deprive this defendant of its property without due process of law in contravention or violation of the Fourteenth Amendment to the Constitution of the United States and in contravention or violation of Article 1, Section 6, of the Con-
[fol. 121] stitution of Alabama, 1901, and would deny to this defendant equal protection of the law in contravention or violation of the Fourteenth Amendment of the Constitution of The United States and would constitute an abridgement of freedom of the press in contravention or violation of the First Amendment to the Constitution of the United States, taken together with the Fourteenth Amendment of the Constitution of the United States and would impose an unreasonable burden upon Interstate Commerce in contravention or violation of Article I, Section 8 of the Constitution of the United States and such questions and the evidence sought to be adduced therefrom and such documents would be illegal and immaterial as a basis for the Court construing or holding that Don McKee was an agent of this defendant upon whom service of process might be had so as to support a holding by the Court that any purported service upon him would subject

this defendant to the jurisdiction of this Court and the admission of such evidence and the holding on the basis of such evidence that he was an agent so as to subject this defendant to the jurisdiction of this Court, would deprive this defendant of its property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States and in violation of Article 1, Section 6 of the Constitution of Alabama, 1901, and would deny to this defendant equal protection of the law in violation of the Fourteenth Amendment of the Constitution of the United States and would abridge freedom of the press in violation of the First Amendment to the Constitution of the United States, taken together with the Fourteenth Amendment of the Constitution of the United States and would impose an unreasonable burden upon Interstate commerce in violation of Article 1, Section 8 of the Constitution of the United States.

[fol. 122] Cross examination.

By Mr. M. R. Nachman, Jr.:

Q. Mr. Faber, there are three string correspondents in the State of Alabama, are there not?

A. Yes, sir.

Q. One in Birmingham; one in Montgomery; one in Mobile. Is that correct?

A. Yes, sir.

The Court: Let me see now. You mentioned Chadwick and McKee. Who is the third one?

Mr. Nachman: The third one is a Mr. Castle. Isn't that right?

The Witness: That's right.

The Court: How do you spell it?

The Witness: It is spelled, C-a-s-t-l-e.

Mr. Nachman: He lives in Mobile.

The Witness: Yes.

The Court: All right. Go ahead.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Is it important to the business of The New York Times to have those stringers in Alabama?

Mr. Embry: We object to that, if the Court please. It calls for a conclusion on the part of the witness and that's a matter for the Court to decide from all the facts in the case—

The Court: I think that's a good question. I give you an exception to the ruling of the Court.

Mr. Embry: We except, Your Honor.

Mr. Nachman: You may answer the question.

The Witness: What was the question again?

Mr. Nachman: Will you read the question, Mr. Reporter?

The Reporter: Question: "Is it important to the business of The New York Times to have those stringers in Alabama?"

[fol. 123] The Witness: No, sir.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Haven't you made an active effort to obtain stringers in Montgomery when there were no stringers or it would appear there would be no stringers in the immediate future, Mr. Faber?

A. Yes—

Mr. Embry: Just a minute. Don't answer that. Give me a chance to object before you answer a question. Your Honor, that calls for an unauthorized conclusion on the part of the witness and it asks for an answer which is impossible—to factually ascertain what an active effort is—

The Court: Well, the term is not too definite but I will give you an exception. It is cross examination. Go ahead.

Mr. Embry: We except, if the Court please.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. You may answer.

A. Yes, sir.

Q. You did make such effort.

A. We did make such effort. Yes.

Q. Now, am I correct, sir, that The Times as a matter of business policy wants to have three stringers in Alabama at all times?

Mr. Embry: We object to that, Your Honor. It is a question of policy and not of facts and it doesn't shed any light on the issue of whether or not The New York Times Company was doing business in Alabama and it doesn't specify any period of time during which the witness is called upon to relate events.

The Court: Fix the period of time—

Mr. Nachman: During the time of your active concern with the stringers—I believe you testified on direct examination that you were in charge of the stringers, did you not?

The Witness: Yes, sir.

Mr. Embry: We object to that, Your Honor. That wasn't [fol. 124] his testimony—

The Court: I will let it in and give you an exception. The evidence would have a pretty wide range, I believe. Now, Mr. Embry, we have this rule here in Montgomery and you can follow it if you wish to. If you do not wish to follow it, it is quite all right. If you make an objection, that puts the Court on notice that you are objecting and we don't generally assign any grounds and afterwards you can assign any that you want to. However, if you do assign one or two grounds you are cut off from any others. However, you may follow any practice you wish on that now.

Mr. Embry: I don't follow you, Your Honor.

The Court: Well, here in Montgomery, unless the Court asks for your reasons for objecting, later on you can assign any grounds you want to. Any procedure you wish to follow will be quite all right with the Court.

Mr. Embry: Well, now, was there a question put to the witness? What was the last question?

Mr. Nachman: Yes, there was before all these objections.

The Court: Well, go ahead with another question.

By Mr. M. B. Nachman, Jr.: (Continuing)

Q. I believe that the question that was objected to was, it is a policy of The New York Times, as you know it, Mr. Faber, to maintain three string correspondents in Alabama.

Mr. Embry: Same objection, Your Honor.

The Court: Yes, same ruling.

The Witness: No. I wouldn't say the policy was to maintain three correspondents in Alabama but to maintain correspondents in Alabama and other States.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Well, restricting it to Alabama for the moment, on occasions when you were aware that a string correspondent was about to discontinue his duties with The New York Times, have you not made an active effort to find a replace-
[fol. 125] ment for him?

Mr. Embry: We object to that, if the Court please.

The Court: I will let it in and give you an exception.

The Witness: Yes. We made an effort to replace him.

By Mr. M. R. Nachman: (Continuing)

Q. And I take it that the obvious reason for that effort is so that you would continue to have a stringer in Alabama at the place where one was about to depart. Is that correct?

A. Yes, sir.

Q. Now, what is the overall purpose of a string correspondent?

Mr. Embry: Your Honor, we object to that question as not specifying any period of time.

The Court: Well, can we assume that you are asking about since January 1st, 1960 through April 26th, 1960? Or somewhere in there?

Mr. Nachman: No, sir. Unless the Court so limits us, we would like to go beyond that.

The Court: Well, a reasonable time around that, yes. You can't go way back now.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Do you know of any change within the last five years of the activities of the string correspondents making those activities different from what they have been during the first six months of 1960?

Mr. Embry: We object, Your Honor, to going back for a period of five years—

The Court: Well, I will let it in and give you an exception. It might have some evidential value.

Mr. Embry: We except.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Has there been any change in their activities in that [fol. 126] period of time?

A. No, sir.

Q. It is the same now as it was five years ago, isn't it?

A. Approximately, yes.

Q. All right. Now, I will ask you again, during that period of time, what is the purpose insofar as The New York Times is concerned of having those string correspondents in Alabama?

Mr. Embry: We object to that question, Your Honor, as calling for a mental operation of the witness.

The Court: I will let it in and give you an exception.

Mr. Embry: We except, if the Court please.

The Witness: The purpose of having string correspondents in Alabama and elsewhere is to have someone upon whom we can call when we think there is a news event we want covered or who will call us when they think there is a news event we would be interested in.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. And to perform any other service the New York Times may want performed in that area. Isn't that correct?

Mr. Embry: We object to that question—

The Court: I will let it in and give you an exception.

Mr. Embry: It invades the province of the Court—

The Court: Connect it with the publication of the news—

The Witness: I am only connected with the publication of the news and the gathering of the news.

By Mr. M. R. Nachman: (Continuing)

Q. Do you mean to say that the activities of the stringers are limited to sending stories in to The New York Times for publication?

A. No. Occasionally I call them for information about news stories.

Q. Do they occasionally assist regular staff correspondents of The New York Times in their news gathering activities in Alabama?

Mr. Embry: We object to that question, Your Honor.

The Court: I believe it is competent. I give you an [fol. 127] exception.

The Witness: They help correspondents by furnishing them information. Yes, sir.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Are they sometimes assigned by The New York Times to help regular staff correspondents?

Mr. Embry: We object to that question, Your Honor.

The Court: I will let it in and give you an exception.

Mr. Embry: We except, Your Honor.

The Witness: Are they told? What was your question?

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Are they assigned by The New York Times to assist regular staff correspondents of The New York Times in the news gathering activities of those staff correspondents in the State of Alabama?

Mr. Embry: Same objection, Your Honor.

The Court: Same ruling.

The Witness: No, they are not.

Mr. Beddow: Your Honor, where a question is asked and an exception is taken after an objection is made and then when the question is repeated, as lawyers are prone to do, does Your Honor treat the exception as covering the—

The Court: The objection applies to the whole thing. You don't have to make a separate objection.

Mr. Beddow: I see. It applies to the whole thing. Thank you, sir.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, I would like to show you this brown manila envelope which has been produced in this Court in response to an order by the Court and I will ask you if you are familiar with that?

A. Yes, sir.

Q. Now, I show you this brown envelope which has been [fol. 128] marked and identified as Plaintiff's Exhibit No. 1 for identification and I will ask you to examine the contents of the envelope I have just removed, being two slips of paper. Those were in the envelope?

A. Yes, sir.

Q. Now, for the Record, one of those envelopes—one of those slips of paper which the witness has identified as being in the envelope marked and identified as Plaintiff's Exhibit No. 1 for identification reads as follows: "McKee —Montgomery. Allowance ten dollars. Alabama forming race-riot posses. For authorization see memo, 4-10-60."

A. Yes, sir. That's right.

Q. Now, another slip of paper contained in the envelope identified as Plaintiff's Exhibit No. 1 for identification reads as follows: "McKee-Montgomery. Allowance twenty-five dollars for help given to Salisbury on his swing through South. For authorization see memo, 4-18-60." Now, Mr. Faber, what is meant by the word "authorization?"

Mr. Embry: Your Honor, we object to that. He hasn't laid any predicate showing that this witness has any knowledge of those memos.

The Court: I will let it in. If he doesn't know he may say so.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Do you know what those memos inside the envelope mean, Mr. Faber?

A. I assume that they mean I sent a note up saying to pay Mr. McKee ten dollars and twenty-five dollars on these occasions.

Q. Now, the occasion referred to by the slip as to Mr. Salisbury, is not a situation in which Mr. McKee is sending any news story in to The New York Times, is it?

A. No, sir.

Q. And it is not an occasion when you have assigned him to send in a news story to The New York Times, is it?

A. No, sir.

Q. He was to have no writing activity whatsoever insofar as that authorization was concerned, was he?

[fol. 129] A. No, sir.

Q. But he was to assist on special assignment from The New York Times a regular staff reporter, Mr. Salisbury, in his news gathering activities, was he not?

Mr. Embry: We object to that question, Your Honor. It was assuming he was giving assignments and he hasn't any right to give assignments—

The Court: I will let it in and give you an exception. He can just tell what he did. That's all he can do.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. You may answer the question.

A. No, sir.

Q. He was not so assigned?

A. No, sir.

Q. Whose idea was it that he assist Mr. Salisbury?

Mr. Embry: We object to that question, Your Honor. That is absolutely incompetent, irrelevant and immaterial. It calls for a mental operation of the witness—

Mr. Nachman: Your Honor, I am trying to—

The Court: I will let it in and give you an exception.

The Witness: May I have the question repeated, please?

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Whose idea was it for Mr. McKee to assist Mr. Salisbury?

Mr. Embry: Same objection.

The Witness: I don't know.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. You authorized the payment without knowing whose idea it was or whether he was on official business—

Mr. Embry: We object to that question, if the Court please—

The Court: I will let it in and give you an exception [fol. 130] to each question and will entertain a motion to strike out the answer if you need it which I don't think you do.

Mr. Nachman: You may answer the question—

The Witness: I said that the—

Mr. Embry: Just a minute—

Mr. Beddow: Your Honor, I don't see how this Court Reporter, no matter how good he is—

The Court: Well, he is very excellent.

Mr. Beddow: He appears to be, Your Honor, but I don't see how he can take three men all talking at once—

The Court: Well, you ought to talk one at a time and if the Court Reporter gets in trouble and wants to cut you down to one, we will help him out.

Mr. Beddow: If we are going to protect the Record, the Court Reporter ought to be given a chance.

Mr. Baker: We will stipulate, Your Honor, that they can have an objection to every question we ask and they can assign the grounds they want to and that will shorten it—

Mr. Embry: We prefer to make our objections, if the Court please.

The Court: All right. Go ahead.

Mr. Nachman: Am I correct—

The Court: We have a rule in Circuit Court here that only one lawyer can question a witness at one time.

Mr. Baker: I haven't asked the witness any questions, Your Honor.

The Court: All right. Go ahead.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Am I correct then, Mr. Faber, that your testimony is that you authorized the payment of twenty-five dollars to Mr. McKee without knowing whether his activities were connected with any assignment from The New York Times? [fol. 131] A. I am sorry, I think that's the question—it is not clear to me. I authorized the payment—

Q. You authorized the payment, didn't you?

A. Yes, sir.

Q. Now, as I understood your testimony, it was that you aren't sure whether he was assigned, that is, he, McKee, was assigned to perform these duties or whether he was not assigned to perform these duties.

Mr. Embry: We object to that. It was his testimony that he was not assigned.

The Court: I will let it in and give you an exception.

The Witness: I don't think I ever said whether he was assigned or not.

Mr. Nachman: Well, was he?

The Witness: He was not assigned.

Mr. Nachman: Well, then, I repeat, then whose idea was it that he help Mr. Salisbury?

Mr. Embry: We object to that, if the Court please.

The Court: Well, if he knows. If he doesn't know, he can't answer it.

Mr. Embry: Who is to know who has an idea? That question—

The Court: Well, if he knows. If you don't know then you cannot answer.

The Witness: When Mr. Salisbury went down, I told him we had three stringers in Alabama and that he could call upon them if he chose to and ask them things if he wanted to but I made no assignment of Mr. McKee or Mr. Chadwick.

By Mr. M. R. Nachman: (Continuing)

Q. When Mr. Salisbury called upon these stringers, he was doing so as an agent of The New York Times with authority from you, wasn't he?

Mr. Embry: We object to that question, if the Court please.

The Court: I will let it in and give you an exception.

[fol. 132] Mr. Embry: We except, if the Court please.

The Witness: Well, Mr. Salisbury certainly had information from me that we had stringers there and he could call on them.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. And you expected him to take your statement as authorization to call on them if he saw fit, didn't you?

A. Yes, sir. Certainly.

Q. That was the purpose of your telling him that.

A. Mr. Salisbury. Certainly.

Q. Now, I show you another brown manila envelope similar to the one identified as Plaintiff's Exhibit No. 1 which is headed, John Chadwick. Would you examine the contents of this envelope, please?

A. Yes, sir.

Q. Now, Mr. Faber, I will identify these with you. There are two slips of paper in the envelope just identified as Plaintiff's Exhibit No. 2 for identification and the first one reads, "Chadwick—Birmingham. Allowance twenty-five dollars for help given to Salisbury on his swing through South. For authorization, see memo 4-18." The other slip says, "Chadwick. Allowance ten dollars. Stadium survey. See memo 5-6." Then there is an adding machine tape there also.

A. That's right.

Mr. Embry: Were you asking him a question?

Mr. Nachman: I simply wanted Mr. Faber to identify the fact that these two slips were in the envelopes previously identified as Plaintiff's Exhibit No. 2 for identification.

Mr. Beddow: You are not identifying the third one there, are you?

Mr. Nachman: Well, it is just an adding machine tape but if you want me to—

Mr. Embry: No, that won't be necessary.

Mr. Nachman: If the Court please, we offer these two [fol. 133] envelopes and their contents into evidence. One for Don McKee and the other for John Chadwick and they have been previously identified as Plaintiff's Exhibit 1 and Plaintiff's Exhibit No. 2 for identification.

(Envelope, Don McKee, Montgomery Advertiser, Montgomery, Alabama, dated April, 1960, and contents of envelope, offered and received in evidence and identified as Plaintiff's Exhibit No. 1.)

(Envelope, John Chadwick, Room 505—Massey Building, South Magazine, Birmingham, Alabama, dated April, 1960, and contents of envelope, offered and received in evidence and identified as Plaintiff's Exhibit No. 2.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, did the same situation obtain with regard to Mr. Chadwick, namely, that you also gave Mr. Chadwick's name to Mr. Salisbury as a stringer and told him that he could call on him for assistance if he wanted to?

A. Yes, sir.

Q. And you also, I take it, authorized the payment of Mr. Chadwick for his services in that regard.

A. Yes, I did.

Q. Now, I am not entirely clear from your direct testimony as to who assigns the staff correspondents to come into Alabama to gather news. Do you do that?

A. Well, it is a little more complicated than that. I do the actual assigning but I get authorization from my superiors before I do so but I actually tell them to go in when it is necessary.

[fol. 134] Q. Do they sometimes decide themselves, that is, they, the staff correspondents, that there is a news situation worthy of coverage in Alabama and they go in on their own?

Mr. Embry: We object to that, Your Honor. How would he know what is in the mind of another man, Your Honor?

Mr. Nachman: I will re-phrase the question, Your Honor.

The Court: All right. Go ahead.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Do these staff correspondents sometimes come into Alabama without prior direction from you or from The New York office?

Mr. McCleod: Your Honor, we object to that on the grounds that he doesn't specify any time. We can't tell from the question whether it is a time that is relevant to the—

The Court: Well, if he has a general idea within the

last four or five years prior to January 1st, 1960 or any reasonable length of time—

Mr. Embry: If Your Honor is holding that a period of four or five years is pertinent and holding that it is pertinent within that period of time—

The Court: Well, pursuing a policy and the manner and course of doing business—it might be admissible. I will give you an exception.

Mr. Embry: We except.

Mr. Nachman: Your Honor, we would like to state that they have asked generally about the activities of these people and we made no objection as to time.

The Court: Well, I am letting it in. I have ruled with you. Go ahead.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Do the staff correspondents, Mr. Faber, sometimes come into Alabama and gather news and submit news stories without having prior direction from you or from somebody in the New York office?

[fol. 135] Mr. Embry: If the Court please, we object to that unless the period of time is stated specifically.

The Court: I will let it in and give you an exception.

The Witness: No, sir.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. They never do that?

A. No, sir.

Q. Did you order Mr. Sitton to come into Alabama to cover the Martin Luther King trial?

Mr. Embry: We object to that. No time is stated—

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. The trial that took place in May of 1960 when he was charged with filing false income tax returns to the State of Alabama?

A. What date was that?

Q. Did you direct Mr. Claude Sitton to come into the

State of Alabama to cover the criminal trial of Martin Luther King who was charged with Alabama Income Tax fraud and who was tried in May of 1960? Did you direct that Mr. Sitton come into Alabama to cover that trial?

Mr. Embry: We object to that, if the Court please because the date specified is following the date of the last service attempted to be obtained against—

The Court: We will let it in and give you an exception.

Mr. Embry: We except.

The Witness: Sitton in May, 1960—the King trial. Yes, sir.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. You directed him to come in to cover that trial.

A. Yes, sir.

Q. Did you direct Mr. Salisbury to come into Alabama and to write the news story about Birmingham which appeared in The New York Times of April 12th and April 13th, 1960?

[fol. 136] Mr. Embry: If the Court please, we object to that. It is assumed that he wrote the article in Alabama. That has not been established.

The Court: I will let it in and give you an exception.

Mr. Embry: We except.

Mr. Nachman: Did you direct him to come in and write those stories?

Mr. McCleod: Your Honor, we object on the grounds that that asks two different questions in one.

The Court: Well, now, we have a rule whereby only one lawyer at a time can object while a witness is on the witness stand. I will overrule the objection and give you an exception.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. You may answer the question.

A. I made Mr. Salisbury a list of cities of which Birmingham was included in that series of articles which he did write.

Q. Your answer is, yes?

Mr. Embry: We object to that. He has already answered the question.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Did you direct him to write an article about Birmingham when you gave him this list of cities, Mr. Faber?

A. No, sir.

Q. You did not?

A. No, sir.

Q. I see. It was up to him then to decide whether he wrote an article about Birmingham.

A. No, sir.

Q. Did you decide that The Times was to have an article about Birmingham?

A. Ultimately, yes, sir.

Q. You did submit to him a list of cities which included [fol. 137] Birmingham before he came into Alabama, did you not?

A. Yes, sir.

Q. What was the purpose of submitting to him that list of cities?

Mr. Embry: We object to that, Your Honor.

The Court: I will let it in and give you an exception.

The Witness: I gave him a list of cities so that he could make a swing through these cities and recommend back to me whether or not we should do an article about the individual cities on that list.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, I would like to read to you a memorandum or writing and ask you whether or not you recognize this as being a memorandum that you wrote. "Harrison Salisbury is leaving tonight for the South. He will do a spot story Saturday or Sunday in Andalusia, Alabama and then proceed to Baton Rouge where he will do a background piece on what is going on there. His instructions are not to try to file daily pieces, not to chase after spot developments from one city to another but to do a thorough situationer on the sit-downs in each city he visits. Presumably,

the Baton Rouge piece will be ready on Wednesday or Thursday and he will then go to either Birmingham or Memphis depending on developments. During the trip he will take as days off April 11th, 12th and 13th, resuming his surveying on April 14th."

Mr. Embry: We object to that, if the Court please, unless the document is exhibited to the witness and he is permitted to see it.

The Court: I will let it in and give you an exception.

Mr. Embry: Sir?

The Court: I will let it in and give you an exception to the Court's ruling.

Mr. Nachman: Do you recall writing any such memorandum?

The Witness: Yes, sir.

[fol. 138] Mr. Embry: We except, if the Court please.

Mr. Nachman: Your answer was, yes?

The Witness: Yes, sir.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Salisbury, he did write an article about Andalusia which appeared in one issue of The New York Times, didn't he?

A. Yes, sir.

Q. He wrote two more stories about Birmingham which also appeared in The New York Times, did he not?

A. Yes, sir.

Q. Now, Mr. Faber, I show you two sheets of paper and ask you if you can identify those or if you recognize them?

A. Yes, sir. I do.

Q. What are they?

A. Well, they are entitled "Rules for Correspondents."

The Court: They are entitled Rules for what?

The Witness: They are entitled, "Rules for Correspondents," Your Honor.

Mr. Nachman: If the Court please, we would like to introduce these two sheets to be marked as our next exhibit, if the Court please.

Mr. Embry: We object, Your Honor. No predicate has been laid as to the relevancy of these documents on the issue of the defendant doing business or not in the State of Alabama within the limited period of time to the date of purported service being April 21st, 25th and 26th, 1960.

The Court: I think it is admissible provided it is shown that those rules are applicable to any person that might have been sent into the State of Alabama.

Mr. Nachman: I am just getting ready to ask that question, Your Honor.

The Court: I overrule the objection.

Mr. Embry: We except, if the Court please.

[fol. 139] (Rules for Correspondents, The New York Times, National News Desk, signed Harold Faber, Day National News Editor, Page 1 and 2, offered and received in evidence and identified as Plaintiff's Exhibit No. 3.)

Cross examination. (Continued)

By Mr. M. R. Nachman, Jr.:

Q. Mr. Faber, your signature or facsimile thereof appears on the bottom of both sheets, Page 1 and Page 2 of this exhibit, Plaintiff's Exhibit No. 3, does it not?

A. Yes, sir.

Q. Now, would you state to the Court what these Rules for Correspondents are and to whom they apply and specifically whether they apply to the three stringers who are in Alabama, namely, Mr. Chadwick, Mr. McKee and Mr. Castle?

Mr. Embry: We object to that, if the Court please. The document itself is the best evidence.

The Court: Well, the Court can read it or he can give a brief summary—

Mr. Nachman: Well, Your Honor, I was just asking that in consideration of Mr. Embry's last objection that there was no indication that these documents apply to anything or had anything to do with this case. It was asked by way of clarification—

The Court: All right. Go ahead. I will give you an exception.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. All right. Go ahead.

A. What was the question now?

Q. The question was, what these documents are, to whom they apply and specifically whether they apply to the three [fol. 140] stringers in Alabama, Mr. Chadwick, Mr. McKee and Mr. Castle?

A. Well, these are rules for correspondents and they apply to all our string correspondents and specifically the three in Alabama as well as the others. What they are is a listing of rules of time and sequence and how to file stories with The New York Times and how we pay for stories that we order and what kind of stories generally we are interested in or that they can offer to us.

Mr. Nachman: Now, Your Honor, we have a group of envelopes here which we would like to introduce into evidence at this time but in order to save the time of the Court and if counsel for the defendant, the Times, is agreeable, and if the Court is agreeable, we will introduce them into evidence in bulk and let the Court Reporter identify them at some later time and if that procedure is agreeable I will, of course, have them identified by Mr. Faber. They are envelopes that are similar to the envelopes already introduced into evidence as Plaintiff's Exhibits No. 1 and 2.

Mr. Embry: Do they contain anything?

Mr. Nachman: Yes, there are contents in most of the envelopes.

Mr. Embry: Well, of course, Your Honor, we wouldn't be able to agree to that because we don't know what the dates are or the contents—

The Court: Well, perhaps if we take a recess at this point we might save some time.

Mr. Nachman: I might state also, Your Honor, that all of these envelopes were produced by the defendant, New York Times, in response to the Court's order on the Motion to Produce.

The Court: Well, I will give you a ten minute recess and perhaps you can go into the counsel room and perhaps save time.

Mr. Embry: We can at least find out wherein we don't agree, Your Honor.

The Court: All right. Court is in recess for ten minutes.

Mr. Embry: Now, Your Honor, it hasn't been stated for [fol. 141] the Record, but I assume that we are in the L. B. Sullivan case now. Is that correct, sir?

The Court: That's the way the Motions are headed.

Mr. Embry: Well, we couldn't agree to introduce these except for the four which evidenced payment in 1960. We will have no object to the others as being too remote and as not being competent, relevant or material evidence in this case.

Mr. Nachman: Your Honor, Mr. Faber's testimony as I recall it is that there has been no change in the relationship of these stringers to The New York Times, that is, the Alabama stringers, during a five year period. Therefore, on the basis of that testimony that their duties are the same in 1960 as they were in 1959, 1958 and so forth—

The Court: Well, go ahead and put in those agreed on and you can go into the others separately.

Mr. Nachman: Could I inquire of counsel as to whether that is the only basis of objection, namely, that they are too remote in time and that there isn't any other grounds of objection—

Mr. Embry: We object on the grounds that they are incompetent and irrelevant on this question before the Court and one specific more detailed ground being that they are all too remote other than the four in 1960.

The Court: They are too what?

Mr. Embry: Too remote other than the four in 1960.

The Court: Well, go ahead with those.

Mr. Nachman: We offer in evidence these four then.

Mr. Embry: We have no objection to those.

The Court: Then, we can take up each one separately.

Mr. Nachman: We introduce into evidence these four envelopes which have been identified as Plaintiff's Exhibits 4 through 7.

[fol. 142] (Four Envelopes for John Chadwick, Birmingham, Alabama, dated January, 1960; John Chadwick, Birmingham, Alabama, dated March, 1960; Don McKee, Mont-

gomery, Alabama, dated March, 1960; Don McKee, Montgomery, Alabama; dated February, 1960; offered and received in evidence and identified as Plaintiff's Exhibit No. 4, Plaintiff's Exhibit No. 5, Plaintiff's Exhibit No. 6 and Plaintiff's Exhibit No. 7, respectively.)

Mr. Nachman: As I stated before the recess, Your Honor, in order to save the time of the Court, we have no objection to introducing the other envelopes all of which, as we understand it, relate to payment to stringers and in some instances described as services in bulk for later identification by the Court Reporter.

Mr. Embry: We object to that, Your Honor, on the grounds previously stated.

Mr. Beddow: It is rather a dangerous thing to do, Your Honor.

The Court: All right. We will take them separately then. Don't worry about imposing on the time of the Court as I will be here as long as necessary.

Mr. Nachman: Shall I introduce these one by one, Your Honor?

The Court: Go ahead.

Mr. Nachman: We would now like to introduce an envelope captioned, Don McKee, dated February, 1959.

Mr. Embry: We object to it, Your Honor, on the grounds that it is incompetent, irrelevant and immaterial. It doesn't shed any light on the issue before the Court on the question of doing business by this defendant during the period relevant to the purported date of service in April, 1960. We also object on the grounds that it is too remote in point of time.

The Court: I will let it in and give you an exception. [fol. 143] Mr. Embry: We except.

Mr. Baker: Your Honor, we will stipulate that he can have the same objections to each and every envelope with his exception.

Mr. Embry: All right. That will be fine. That means, Your Honor, that we have the same objection to each exhibit—

The Court: Yes, same objection, same ruling and same exception.

Mr. Nachman: The next exhibit will be Don McKee, March, 1959. The next one is Don McKee, July, 1959. Next is Don McKee, November, 1959. Next is Don McKee, December, 1959. Next is John Chadwick, October, 1959. Next is John Chadwick, September, 1959. Next is John Chadwick, August, 1959. Next is John Chadwick, July, 1959. Next is John Chadwick, June, 1959. Next is John Chadwick, April, 1959. Next is John Chadwick, January, 1959. John Chadwick, November, 1958. John Chadwick, October, 1958. John Chadwick, August, 1958. John Chadwick, July, 1958. John Chadwick, May, 1958. John Chadwick, March, 1958. John Chadwick, January, 1958. John Chadwick, December, 1957. John Chadwick, September, 1957. John Chadwick, August, 1957. Another one, John Chadwick, August, 1957. John Chadwick, June, 1957. John Chadwick, May, 1957. John Chadwick, March, 1957. John Chadwick, February, 1957. John Chadwick, January, 1957. John Chadwick, December, 1956. John Chadwick, November, 1956. John Chadwick, September, 1956. John Chadwick, August, 1956. John Chadwick, June, 1956. John Chadwick, May, 1956. John Chadwick, April, 1956. John Chadwick, February, 1956. John Chadwick, January, 1956. The next one is Maurice Castle, Jr., October, 1958. Next is Maurice Castle, Jr., January, 1959. Next is Maurice W. Castle, Jr., May, 1958. Next is Maurice Castle, Jr., January, 1958. Next is Maurice Castle, Jr., January, 1957. Next is Maurice Castle, Jr., May, 1956. Next is Maurice Castle, Jr., January, 1956. We also offer into evidence all the contents of these envelopes.

Mr. Embry: We have our objections and exceptions to these, Your Honor.

[fol. 144] The Court: Yes.

Mr. Nachman: As I understand it, Mr. Embry, there is no question but that these envelopes which have been just introduced are records of The New York Times which were produced in response to this Court's order. Is that right?

Mr. Embry: There is no question about that.

(Forty-five Envelopes, offered and received in evidence and identified as Plaintiff's Exhibits 8 through and including Plaintiff's Exhibit No. 52, respectively.)

Cross examination. (Continued)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, I show you three sheets of paper, the top sheet of which is dated February 29, 1960. I will ask you to identify those if you can.

A. Yes, sir. The top one is a telegram signed with my name saying, "Please send Tuesday, day press, collect, one hundred fifty words direct quotation from your latest editorial on civil rights debate in Senate with specific reference to Lyndon Johnson's role and possible effects on his Presidential hopes. Thanks. Faber, New York Times."

Q. Does it show to whom it is directed?

A. Not on that sheet. On the second sheet it shows to whom it was directed. It was directed to the Managing Editor of about twenty newspapers. Do you want me to read them?

Q. Not unless opposing counsel wants it—

Mr. Embry: I would like to have him identify the entire document.

The Witness: It says on this second sheet, "February 29, 1960 at 5:00 P.M. Managing Editor of: Baltimore Sun, [fol. 145] Louisville Courier Journal, New Orleans Times-Picayune, Richmond Times Dispatch, Charlotte Observer, Raleigh News and Observer, Charleston News and Courier, Jacksonville Times Union, Tampa Tribune, Birmingham News, Nashville Tennessean, Memphis Commercial Appeal, Chattanooga Times, Jackson Daily News, Arkansas Gazette, Atlanta Constitution, and Atlanta Journal." There is a third sheet here which says, "Austin Statesman, Austin, Texas; Dallas Morning News, Dallas, Texas; Ft. Worth Star Telegram, Ft. Worth, Texas; and Daily Oklahoman, Oklahoma City, Oklahoma."

Mr. Nachman: We offer this in evidence, if the Court please.

Mr. Embry: We object to that, Your Honor. I can't see the relevancy of that.

The Court: What is the purpose of that, Mr. Nachman?

Mr. Nachman: The purpose of this, Your Honor, is that

this is once again an attempt by the Times to gather news from a source in Alabama here—

The Court: Let me see those papers for a minute.

Mr. Nachman: Here they are, Your Honor. The Birmingham News—

Mr. Embry: What is the date of that?

The Witness: February 29th, 1960.

The Court: Let me read them. I think this would be admissible. I will give you an exception.

Mr. Embry: We except, Your Honor.

Mr. Nachman: Will it be all right to make these one exhibit as they are stapled together?

Mr. Embry: That will be all right.

Mr. Nachman: We offer this in evidence, if the Court please.

(Three sheets of paper, dated February 29, 1960, offered and received in evidence and identified as Plaintiff's Exhibit No. 53.)

[fol. 146] Cross examination. (Continued)

By Mr. M. R. Nachman, Jr.:

Q. Now, Mr. Faber, I show you another document which is dated March 24, 1960 and ask you to state to the Court what that is.

A. This is a telegram which I sent to Mr. Chadwick which reads, "March 24, 4:30, John R. Chadwick, South Magazine, Birmingham, Alabama. On Friday please send five hundred Governors actions on salaries after he meets with teachers. Thanks. Faber, New York Times."

The Court: After the Governor meets with who?

The Witness: Teachers, Your Honor.

Mr. Nachman: We would like to introduce this as our next exhibit, if the Court please.

Mr. Embry: We object to that on the same grounds, if the Court please.

The Court: Overruled.

Mr. Embry: We except.

(One sheet of paper addressed to John R. Chadwick, South Magazine, Birmingham, Alabama, dated March 24, 1960, offered and received in evidence and identified as Plaintiff's Exhibit No. 54.)

Cross examination. (Continued)

By Mr. M. R. Nachman, Jr.:

Q. Next I show you two documents clipped together with a gem clip, Mr. Faber, and ask you to state to the Court what those documents are.

A. Well, the first is a telegram on a Western Union telegram blank which reads as follows: "Don McKee, Advertiser, Montgomery, Alabama. Like five hundred word week-ender for Watch Tower feature on new attempt [fol. 147] of negroes to enter Alabama University covering AAA how important is effort BBB how does it tie in with wave of demonstrations throughout South CCC what it reflects about new mood of negro stop copy Thursday Please acknowledge. Signed Desmond, New York Times Sunday Review." It is dated 3-23-60. The second sheet is a piece of paper that says, "D P R Collect W U X Montgomery, Alabama, March 23, 4:08 P.M. Desmond. New York Times, New York, Sunday Review. Will do, Re five hundred words University of Alabama Negro Entry Try Thursday Don McKee, The Advertiser, Montgomery 5:34 P.M."

Mr. Nachman: We offer this in evidence if the Court please.

Mr. Embry: We object to it on the same grounds, if the Court please.

The Court: I will let it in and give you an exception.

Mr. Embry: We except, if the Court please.

(Western Union telegram, addressed to Don McKee, Advertiser, Montgomery, Alabama, dated 3-23-60 signed Desmond, New York Times Sunday Review and reply thereto dated March 23, 1960, offered and received in evidence and identified as Plaintiff's Exhibit No. 55.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. I next show you two documents also clipped together with a gem clip, Mr. Faber, and I ask you what those two documents are?

A. The first page is a Western Union telegram blank dated March 2nd, 1960 addressed to Don McKee, The Advertiser, Montgomery, Alabama. "Can you get figures on area of City of Tuskeegee both old and new boundaries, also population of old city and new city broken down by negro and white stop. Please wire reply soonest. Desmond, New York Times, Sunday Review." The second sheet says, "N. P. R. Collect, Montgomery, Alabama, March 2nd, 7:40 P.M. Mr. Desmond. New York Times Sunday Review, [fol. 148] New York City. Exact figures on Tuskeegee boundary change not immediately available. Can check further Friday if so desire. Gerrymanddering took approximately three thousand Negroes out of the City Limits including an estimated four hundred Negro voters. There were previously six hundred Negro voters. No white voters effected. Negroes outnumber whites seven to three in City and six to one in County. Tuskeegee Institute and heavily populated residential sections were eliminated from the City leaving only four to ten Negro voters. Have engraving of artist sketch of area before and after, if interested. Signed Wayne Powell, Montgomery Advertiser, 9:18 P. M."

Mr. Nachman: We offer this into evidence, if the Court please.

Mr. Embry: We object to that, if the Court please, on the grounds previously assigned.

The Court: Same ruling, same exception.

Mr. Embry: We except, if the Court please.

(One Western Union telegram, dated March 2, 1960, to Don McKee, Advertiser, Montgomery, Alabama, signed Desmond, New York Times Sunday Review and reply thereto, offered and received in evidence and identified as Plaintiff's Exhibit No. 56.)

Mr. Nachman: Your Honor, could I ask opposing counsel for the Record whether there is any objection based

on the question of whether or not these are documents produced by The New York Times in response to the Motion to Produce?

Mr. Embry: I would have to ask the witness about that.

Mr. Nachman: Well, let me go back then and get that straight.

Mr. Embry: I assume that it is.

Mr. Nachman: Well, I just want to get it straightened out now, if the Court please.

[fol. 149] Mr. Embry: I think these are things that we produced.

Mr. Nachman: Then, there is no question as to Plaintiff's Exhibits No. 53, 54, 55 and 56. There is no question that the documents contained in those exhibits were produced by the Times in response to the Court's order. Is that correct?

Mr. Embry: Over our objection, of course, yes.

Mr. Nachman: Well, I mean, that there is no objection based on that ground.

Mr. Embry: No.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, I show you another set of two documents clipped together dated April 13th, 1960 and ask you to identify these, if you will.

A. These are two sheets of paper and they read as follows: "April 13, 1960 at 4:35 P.M. John Chadwick, South Magazine, Birmingham, Alabama. Send text editorial on Salisbury story soonest. Signed, Potter, New York Times." The second sheet attached to it reads as follows: "D P R Collect. Birmingham, Alabama, April 13, 2:40 P.M. Harold Faber or National News Desk. New York Times, Times Square, New York. You interested in Birmingham News editorial comment on Salisbury Tuesday piece. Signed, John Chadwick, 4:08 P.M."

Mr. Nachman: If the Court please, we offer these two sheets into evidence to be identified as our next exhibit. Now, Mr. Embry, could we have a stipulation that if there is any objection to the effect that these are not part of

the records produced that the question will be raised each time or do you prefer that we ask you the question each time?

Mr. Embry: No. I will raise the question if it is not. I assume that it came from our records.

Mr. Nachman: Well, then, unless the witness indicates to the contrary it will be assumed that the instrument in question came from the records produced.

Mr. Embry: Yes, that will be all right.

[fol. 150] Mr. Nachman: All right. I just wanted to get it straight.

Mr. Embry: We have the same objection and exception.

The Court: Yes.

(Western Union telegram dated April 13, 1960 to John Chadwick, Birmingham, Alabama, signed Potter, New York Times and answer thereto, offered and received in evidence and identified as Plaintiff's Exhibit No. 57.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, I show you another set of two documents and ask you to state what they are.

A. There are two sheets, the first of which says: "John R. Chadwick, South Magazine, Birmingham, Alabama. Please file text of editorial. Signed O'Neall, New York Times. 5:20 P.M., April 15, 1960." The second sheet reads as follows: "D P R Collect. Birmingham, Alabama, April 15, 3:24 P.M. Harold Faber or National News Desk. New York Times, Times Square, New York. Shall I file text of Birmingham News editorial of today commenting on Salisbury story? News critical of 'amazing recital of untruths and semi-truths' and 'shoddy reporting.'" Signed, "John Chadwick. 5:07 P.M. E S T."

Q. Was that date April 15th, 1960?

A. Yes, sir.

Mr. Nachman: If the Court please, we offer this as our next exhibit.

Mr. Embry: If the Court please, we object on the same general grounds previously assigned and on the ground that it does not shed any light on the issues involved.

The Court: Yes. Same ruling, same exception.

Mr. Embry: We except, if the Court please.

[fol. 151] (Western Union Telegram dated April 15, 1960 to John R. Chadwick, Birmingham, Alabama, signed O'Neill, New York Times and answer thereto, offered and received in evidence and identified as Plaintiff's Exhibit No. 58.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. I show you now, Mr. Faber, two more documents stapled together and ask you what they are.

A. These are two sheets stapled together and the first one reads as follows: "N D R Collect. Birmingham, Alabama. 8:28 P.M. National News Week. New York Times, New York. J. C. Laney, Center of Brotherhood Locomotive Engineer Dispute unavailable at this point for comment on possible ouster. Will try again Saturday morning and file briefly for Sunday. Signed, John Chadwick. 10:12 P.M." The second sheet reads, "D B R Collect, Birmingham, Alabama. 5:55 P.M. Harold Faber or National News Desk. New York Times, New York. Laney unavailable until about 8:00 P.M. your time. Will file briefly as soon as contacted on Railroad Featherbed Dispute. Signed, John Chadwick. 7:40 P.M. E.S.T."

Mr. Embry: If the Court please, may I show on voir dire by the witness that there is no indication of any date?

The Court: Yes.

The Witness: No, sir. That's right. There is no indication of any date.

Mr. Embry: If the Court please, we object to that.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, those two documents were produced and were in response to the Court's order to produce, were they not?

A. I assume so. Yes, sir.

Q. The Court's order to produce had certain time limita-
[fol. 152] tions in it, did it not?

A. Well, I don't think I ever saw the Court order.

Mr. Embry: Well, it was the 1st day of January, 1956 up until and through April, 1960, Your Honor and we cannot tell from that document what date it purports to have been sent or received. We object to it because of that defect and omission and also because of the fact it is not evidence confined to a period which is relevant to the inquiry before the Court.

Mr. Nachman: If the Court please, we submit that the testimony is that these two documents were produced in response to the Court's order and the Court's order, as Mr. Embry has stated, specified a certain period of time during which the production of documents should take place, that is, the documents having been in existence during that period of time and the witness has testified that the documents are here—

The Court: I think it is admissible, Mr. Embry. I will let it in and give you an exception.

Mr. Embry: We except, if the Court please.

(Western Union telegram, undated, to National News Week, New York Times, New York and Western Union telegram to Harold Faber, National News Desk, New York Times, New York, from John Chadwick, offered and received in evidence and identified as Plaintiff's Exhibit No. 59.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. I show you now two documents, Mr. Faber, and ask you to state to the Court what they are.

A. The first one is a letter addressed to me, dated January 26, 1959 which says: "Dear Mr. Faber. Would you be interested in a round-up, backgrounder, and so forth, on these two stories, that is, that of loyalty oath fight and expected all-out fight on loan sharks (which are thicker [fol. 153] than flies in this State) by new administration? Signed, Don McKee." The second sheet is a letter from me to Mr. Don McKee dated January 30th, 1959. It says, "Mr. Don McKee, Montgomery Advertiser, Montgomery, Alabama. Dear Mr. McKee: Although we cannot use either of your two suggestions, I hope you will continue to make them. It's just been a tight two weeks. Signed, Harold Faber, Day National News Editor."

Mr. Nachman: If the Court please, we offer these two letters into evidence.

Mr. Embry: If the Court please, we object to them on the grounds that the time is too remote and they are incompetent, irrelevant and immaterial.

The Court: The same ruling and you have an exception.

Mr. Embry: We except.

(Letter to Mr. Harold Faber, Day National News Editor, New York, New York, dated January 26, 1959 from Don McKee and letter to Don McKee, Montgomery, Alabama, dated January 30, 1959 from Harold Faber, Day National News Editor, New York Times, New York City, New York, offered and received in evidence and identified as Plaintiff's Exhibit No. 60.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Next, Mr. Faber, I show you three documents clipped together with a gem clip. Would you state to the Court what they are? I have no desire that you read the entire three documents unless Mr. Embry wants you to do so.

A. Well, these are three letters and the first one is a letter addressed to me by a man by name of Mr. Edward Swietnicki, and it is dated July 25th, 1957 and it says that he would like to work with us as a stringer. The second letter is from me dated July 28th, 1957 addressed to Mr. Swietnicki saying that we are not going to replace a stringer [fol. 154] at this time.

Q. Will you read the third letter?

A. The third letter is dated September 15th, 1957 and it says, "Mr. Edward Swietnicki, Montgomery Advertiser, Montgomery, Alabama. Dear Mr. Swietnicki: If you are still interested in becoming our stringer in Montgomery here is a copy of our rules for correspondents and a card to be filled out and returned. If you have any questions, please don't hesitate to ask them. With best wishes, Sincerely, Harold Faber, Day National News Editor."

Mr. Nachman: We offer these three letters to be identified as our next exhibit, if the Court please.

Mr. Embry: We object, if the Court please, on the grounds that the documents show on their face that they

are an exchange of correspondence in January of 1957 and that 1957 is too remote and they are incompetent, irrelevant and immaterial and wouldn't shed any light on the inquiry for the Court as to the question of doing business or not by this defendant during the pertinent period at or about April 21st to 26th, 1960.

The Court: I will let them in and give you an exception.

Mr. Embry: We except, Your Honor.

(Three letters being letter to Harold Faber, National News Desk, New York Times, New York, from Edward Swietnicki, Montgomery Advertiser, Montgomery 2, Alabama, dated July 25, 1957 and two replies thereto, dated July 28, 1957 and September 15, 1957 from Harold Faber, Day National News Editor, offered and received in evidence and identified as Plaintiff's Exhibit No. 61.)

By Mr. M. R. Nachman, Jr.: (Continning)

Q. Mr. Faber, referring to the third page of Exhibit No. 61, that is, your letter of September 15th, 1957 to Mr. Edward Swietnicki in Montgomery, Alabama, what is con- [fol. 155] tained on the card or cards which you have referred to in this letter?

A. This is a card which contains blanks for filling out names and addresses, working hours, phone numbers and the date when this transaction took place to be filled out by the men to whom it is sent.

Q. Now, I don't recall that any such cards were produced in response to the Court's order. Do you have any of those cards with you at this time?

A. No, sir. I don't.

Mr. Embry: I don't think the motion called for it but we will be glad to give you one. I think I can find you one if you will give me a minute to look through my papers here. Here is one you can have.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. I show you now a blank card with printing on it. Is that the type card you had reference to?

A. Yes, sir. These are the cards we sent out.

Mr. Nachman: If the Court please, we offer this card into evidence to be identified as our next exhibit.

(Blank card containing printing, offered and received in evidence and identified as Plaintiff's Exhibit No. 62.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, am I correct in stating that the last line on this blank card, Plaintiff's Exhibit No. 62, says, "Date of Appointment as New York Times correspondent."

A. Yes, sir. That's right.

Q. These cards are filled out when all stringers in Alabama or elsewhere become connected with the New York Times? Is that correct?

A. Yes, sir.

Q. Is there a card in your files presently for Mr. McKee [fol. 156] like this one?

A. Yes, sir.

Q. Is there a card for Mr. Chadwick like this one?

A. Yes, sir.

Q. And a card for Mr. Castle like this one?

A. Yes, sir.

Q. When I said "this" I mean, Plaintiff's Exhibit No. 62.

A. Yes, sir.

Q. Now, I show you a letter dated January 14th, 1957 and ask you what that is, please, sir.

A. This is a letter addressed to me from Mr. Robert J. Murphy of The Montgomery Advertiser dated January 14th, 1957.

Q. Tell us what it says.

A. It is dated January 14th, 1957 and addressed to Mr. Hal Faber, Day National News Editor, The Times, New York, New York. It says, "Dear Mr. Faber: As per your instructions—"

Q. Well, just tell us what the letter says in substance rather than reading the entire letter, Mr. Faber.

Mr. Embry: Well, that would be his interpretation of it and we would prefer that the whole letter be read. We object to it unless the entire letter is read.

The Court: Read the letter.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. All right, Mr. Faber. Go ahead and read it.

A. It says, "Mr. Hal Faber, Day National News Editor, The Times, New York, New York. Dear Mr. Faber: As per your instructions to Bill McDonald and Phil Banjamin for clarification of my status as correspondent for The Times, here is the information you requested: Bill asked me to take over his duties with The Times on, I believe, December 27th. You are acquainted with his reasons, I'm sure. I filed material on that and subsequent dates and I have worked with both Benjamin and Clarence Dean on the bus situation here. I would like to continue working with you [fol. 157] as your regular Montgomery area correspondent. Bill mentioned that he had sent you a resume of my background. If there is anything further you require, I will be pleased to forward it to you. I look forward to a pleasant working relationship. Sincerely, Robert J. Murphy."

Mr. Nachman: We offer this letter into evidence, if the Court please, to be marked and identified as our next exhibit.

Mr. Embry: If the Court please, we object to that on the grounds that it is too remote to shed any light on the issues before the Court with reference to the question of doing business by this defendant at or about the time of the purported service in April of 1960 and on the further ground that it is a communication which on its face shows it to have been written to The New York Times and to Mr. Faber as their representative by a third person and would therefore constitute in the use of the language and material contained in that document a statement by a third person which by its introduction into evidence would attempt to bind this defendant with reference to the use of the words contained therein referenced to the subject matter of the letter, Your Honor.

The Court: I will let it in and give you an exception.

Mr. Embry: We except, if the Court please.

(Letter, to Mr. Harold Faber, Day National News Editor, New York Times, New York, New York, dated January 14, 1957, from Robert J. Murphy, The Advertiser Company,

Inc., Montgomery 2, Alabama, offered and received in evidence and identified as Plaintiff's Exhibit No. 63.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, I show you a letter dated January 17th, 1957 and ask you to read that to the Court.

A. This is a letter from me to Mr. Murphy, dated January 17th, 1957. It reads as follows: "Mr. Robert J. Murphy, Montgomery Advertiser, Montgomery 2, Alabama. Dear Mr. Murphy: Will you please fill out the enclosed card [fol. 158] and return it. I am also enclosing a set of the rules for our correspondents. With best wishes, Sincerely, Harold Faber, Day National News Editor."

Mr. Nachman: If the Court please, we offer this letter into evidence.

Mr. Embry: We object to that, if the Court please, on the grounds that it is incompetent, irrelevant and immaterial and too remote in point of time.

The Court: Same ruling.

Mr. Embry: We except, if the Court please.

(Letter, to Robert J. Murphy, Montgomery Advertiser, Montgomery, Alabama, from Harold Faber, Day National News Editor, dated January 17th, 1957, offered and received in evidence and identified as Plaintiff's Exhibit No. 64.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, in terms of Mr. Embry's objection to the prior exhibit, Plaintiff's Exhibit No. 64, the use of the phrase "our correspondents" in that letter is your own, is it not?

A. It is my phrase, certainly.

Q. Now, Mr. Faber, I show you another letter dated January 17th, 1957. I will ask you to identify that document.

A. This is a letter to me from Mr. Robert J. Murphy, dated January 17th, 1957, which is, basically, a resume of Mr. Murphy's experience.

Mr. Nachman: Do you want this letter read in its entirety, Mr. Embry?

Mr. Embry: I don't care to have it read. It will be before Your Honor if you admit it into evidence.

Mr. Nachman: We offer this letter into evidence then, if the Court please.

Mr. Embry: We object, if the Court please, on the [fol. 159] grounds that it is incompetent, irrelevant and immaterial and too remote to shed any light on the issue before the Court on the questions involved in this inquiry having been, on its face, shown to be a communication dated January 17th, 1957.

The Court: I will let it in.

Mr. Embry: We except, if the Court please.

(Letter, to Mr. Harold Faber, Day National News Editor, The Times, New York, New York, from Mr. Robert J. Murphy, dated January 17th, 1957, offered and received in evidence and identified as Plaintiff's Exhibit No. 65.)

Mr. Beddow: Now, if these exhibits are submitted into evidence, don't you think that for the convenience of the Court that they ought to be read? I think they ought to be read.

Mr. Nachman: Well, we were trying to save a little time but we certainly have no objection to their being read.

Mr. Embry: Well, what does Your Honor say to that?

The Court: Well, go ahead and introduce them into evidence and the Court can read them.

Mr. Beddow: Well, Your Honor, we want to do it in whatever manner your Honor suggest.

The Court: Well, I am in favor of saving time if we can. Why not just introduce the letter and if the witness says it is his letter, he can identify it and it can go into the Record and the Court will read it when it is ready to rule.

Mr. Nachman: Well, we will continue to read anything that we consider especially noteworthy and I will assume that Mr. Embry will do the same.

The Court: All right. Continue, gentlemen.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, this is another document that I am [fol. 160] presenting to you and I would ask you to identify this for the Court if you will.

A. This is another letter to me from Mr. Murphy dated January 20th, 1957 which says that he is returning our card and that he has read our letter of instructions but has kept no record of requested and filed stories.

Mr. Nachman: If the Court please, we offer this letter dated January 20th, 1957 into evidence and ask that it be identified as our next exhibit.

Mr. Embry: If the Court please, we object to that. The letter was written in January of 1957 and we object on the grounds that it is too remote in point of time and it is completely irrelevant, incompetent and immaterial.

The Court: I will let it in and give you an exception, Mr. Embry.

Mr. Embry: We except, if the Court please.

(Letter, dated January 20th, 1957 to Mr. Harold Faber, Day National News Editor, The Times, New York, New York, from Mr. Robert J. Murphy, The Montgomery Advertiser, Montgomery, Alabama, offered and received in evidence and identified as Plaintiff's Exhibit No. 66.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, I show you another document dated July 15th, 1957 and I will ask you to identify this and ask you to read it, please.

A. This is a duplicate of the letter sent by me to Mr. Murphy and it is dated July 15th, 1957. It says, "Robert J. Murphy, The Advertiser, Montgomery, Alabama. Dear Mr. Murphy: We sent you a check for the Tuskeegee assignment before your bill arrived, which may explain the difference between them. The check was designed to take care of your expenses, but I see they were under estimated. An additional check will be authorized; but you may have to [fol. 161] wait a month for it. It will go on our July payroll, which won't go out until about the 10th of August. I am sure it, plus the previous check, will take care of the situation. Sincerely, Harold Faber, Day National News Editor."

Mr. Nachman: If the Court please, we offer this letter dated July 15th, 1957 into evidence to be marked and identified as our next exhibit.

Mr. Embry: If the Court please, we object to it on the same grounds that it is incompetent, irrelevant and immaterial and too remote in point of time being dated July 15th, 1957.

The Court: Same ruling.

Mr. Embry: We except, if the Court please.

(Letter, dated July 15th, 1957 to Robert J. Murphy, The Advertiser, Montgomery, Alabama, from Harold Faber, Day National News Editor, offered and received in evidence and identified as Plaintiff's Exhibit No. 67.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, is there any difference in the way financial transactions were handled between The New York Times and Don McKee were handled and the way the financial transactions in that letter identified as Plaintiff's Exhibit No. 67, dated July 15th, 1957, were handled between The New York Times and Robert J. Murphy?

Mr. Embry: If the Court please, we object to that question on the same grounds previously assigned and that it is incompetent, irrelevant and immaterial and because of the remoteness of time, the letter being dated in July, 1957.

The Court: Same ruling.

Mr. Embry: We except.

The Witness: No, sir.

[fol. 162] By Mr. M. R. Nachman, Jr.: (Continuing)

Q. In other words, the financial transactions with McKee and The New York Times are handled in the same way as the financial transactions between Murphy and The New York Times described in Plaintiff's Exhibit No. 67. Is that correct, sir?

A. Yes, sir.

Q. Am I also correct in stating that the same handling occurs with regard to Mr. Chadwick and Mr. Castle?

A. Yes, sir.

Q. Now, Mr. Faber, I show you another letter dated February 12th, 1956 and ask you to identify that if you will.

A. This is a letter to me from Mr. Murphy but it doesn't seem to have any date on it, addressed to Mr. Harold Faber, Day National News Editor, New York Times, New York. It says, "Dear Mr. Faber: Following is a list of expenses in connection with assignments covering the situation in Tuskeegee, Alabama—"

Q. Mr. Faber, may I interrupt you a moment? Unless Mr. Embry insists, we do not insist that you read the entire letter—

Mr. Embry: Let me see it, if you will.

Mr. Nachman: Here it is.

Mr. Embry: Your Honor, we object to this instrument even being read. It bears no date and the subject matter is—

Mr. Nachman: If the Court please, we withdraw that.

Mr. Embry: Furthermore it says that—

The Court: Well, he said that he would withdraw it. Go ahead.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, I show you a letter dated February 12th, 1956 and I will ask you to identify that and read it to the Court, please, sir.

A. This is a letter from me to Mr. Chadwick dated February 12th, 1956 and it reads as follows: "Mr. John B. [fol. 163] Chadwick, Birmingham News, Birmingham, Alabama. Dear Mr. Chadwick: May I thank you for the fine work you have been doing for us on the University of Alabama story. We have received compliments for your sketch of Miss Lucy from many sources; both Wayne Phillips and Pete Khiss have told me that they couldn't have done their stories without your help. You will find our appreciation reflected in your check for the month of February. With best wishes, sincerely, Harold Faber, Day National News Editor."

Mr. Nachman: If the Court please, we offer this letter dated February 12th, 1956 into evidence.

Mr. Embry: If the Court please, we object to that on the grounds that it is incompetent, irrelevant, immaterial and too remote in point of time and doesn't attempt to prove or disprove the grounds of the Motion to Quash.

The Court: I will let it in and give you an exception.

Mr. Embry: We except.

(Letter, dated February 12th, 1956, to Mr. John R. Chadwick, Birmingham News, Birmingham, Alabama, from Harold Faber, Day National News Editor, offered and received in evidence and identified as Plaintiff's Exhibit No. 68.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, referring to this letter, Plaintiff's Exhibit No. 68, am I correct in stating that Mr. Wayne Phillips is a regular staff correspondent of The New York Times and was so employed as of the dates referred to in that letter?

A. Yes, sir.

Q. Is the same true of Peter Kihss?

A. Yes, sir.

Q. Now, Mr. Faber, I show you a letter dated April 20th, 1958 and ask you to identify that, please, sir.

A. This is a letter from me to Mr. Chadwick dated April 20th, 1958.

[fol. 164] Q. Would you read the letter, please, sir?

A. The letter reads as follows: "Mr. John E. Chadwick, care of South, Massey Building, Room 505, Birmingham, Alabama. Dear Mr. Chadwick: Can you prepare and send to me, in duplicate, a 600-word advance story on the Alabama Primary, for use in the paper of May 4? If desegregation plays a role in the primary, will you kindly note it in an appropriate place in the story. Also, if Negro voting rights play any part in the primary, will you note that, too? I would like to have the copy in hand here Monday, April 28th. Of course, if developments overtake the air mailed story, we would want you to substitute with another story, telephoned to our recorder, L. A. 4-4554. Sincerely, Harold Faber, Day National News Editor."

Mr. Nachman: We offer this letter dated April 20th, 1958 into evidence to be identified as our next exhibit, if the Court please.

Mr. Embry: We object to that, if the Court please, on the grounds that it is incompetent, irrelevant and immaterial and doesn't tend to prove or disprove the grounds of the motion to quash and it is too remote in point of time.

The Court: I will let it in and give you an exception.

Mr. Embry: We except.

(Letter, dated April 20, 1958 to Mr. John E. Chadwick, Birmingham, Alabama, from Harold Faber, Day National News Editor, offered and received in evidence and identified as Plaintiff's Exhibit No. 69.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, I show you next a series of sheets clipped together with gem clips consisting of five sheets and I will ask you to identify this and particularly whether it represents a request by Mr. Chadwick to obtain a story about fire-ants in Alabama and whether the material as [fol. 165] reflected on the last two sheets represents a compliance with that request?

A. The first sheet is a letter from me to Mr. Chadwick dated May 9th, 1958 and it says because of illness my query on fire-ants reached him late and therefore he was sending me a reply from the Alabama Department of Conservation and the second sheet is a letter dated May 8th, 1958 to Mr. John R. Chadwick from the Department of Conservation and the next three sheets are a duplicated handout from the Department of Conservation on fire-ants.

Mr. Nachman: We offer these in evidence, if the Court please.

Mr. Embry: Your Honor, we object to that on the same grounds previously assigned and that they are incompetent, irrelevant and immaterial and that they do not shed any light on the issue before the Court on the question of whether the defendant is doing business or not and they don't tend to prove or disprove any grounds on the Motion to Quash and they are too remote in point of time.

The Court: I will let them in.
Mr. Embry: We except, if the Court please.

(Letter, dated May 9, 1958 to Mr. Harold Faber, Day National News Editor, New York Times, New York, New York, from John R. Chadwick and letter, State of Alabama, Department of Conservation, Montgomery, Alabama, dated May 8, 1958 to Mr. John R. Chadwick, Birmingham, Alabama and three pages on fire-ant controls from the State Department of Conservation, Information and Education Section, Montgomery, Alabama, George M. Kyle, Editor, offered and received in evidence and identified as Plaintiff's Exhibit No. 70.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, I show you two more sheets and I will ask you if they are in relation to the fire-ant story?
[fol. 166] A. These are duplicates of two letters from me to Mr. Chadwick and one is dated May 2nd, 1958 and one is dated May 11th, 1958 asking me to check something, each one, but there is no indication on there as to what they wanted me to check. Obviously, there was an enclosure with these letters.

Q. Well, Mr. Faber, we will withdraw those letters. Now, I show you two letters, one dated January 21st, 1959 and the other dated January 24th, 1959, and I will ask you to identify these letters for us.

A. The first one is a letter to me from Mr. Chadwick on the stationery of the South Magazine asking me to check on a payment that was apparently not made and also saying that he submits this as an expense account for a round-up for the Birmingham area for which he was asked for previously and the second letter is a letter to him—it is a duplicate of a letter to him which says, "Dear Mr. Chadwick: Since we didn't run the financial reviews until mid-January, we are putting all those payments on our January payroll, as you suspected, also, your expenses. Sincerely, Harold Faber, Day National News Editor."

Mr. Nachman: If the Court please, we offer these two letters into evidence.

Mr. Embry: We object on the same grounds previously assigned, if the Court please.

The Court: Same ruling.

Mr. Embry: We except, if the Court please.

(Letter, dated January 21, 1959 to Mr. Harold Faber, Day National News Desk, New York Times, New York, New York, from John R. Chadwick, Birmingham 3, Alabama; and reply thereto dated January 24, 1959, offered and received in evidence and identified as Plaintiff's Exhibit No. 71.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, I show you another letter dated [fol. 167] January 23rd, 1959 and ask you to identify that letter and read it to the Court, please.

A. This is a duplicate of a letter from me to Mr. McKee, dated January 23rd, 1959. It says, "Mr. Don McKee, The Montgomery Advertiser, Montgomery, Alabama. Dear Mr. McKee: Claude Sitton tells me you are ready, willing and able to take over as our Montgomery correspondent. Enclosed is a card to be filled out and returned and a set of rules for our correspondents. Good luck. Sincerely, Harold Faber, Day National News Editor."

Mr. Nachman: If the Court please, we offer this letter dated January 23rd, 1959 into evidence to be marked and identified as our next exhibit.

Mr. Embry: We object to that, if the Court please, on the grounds that it is incompetent, irrelevant and immaterial and too remote in point of time and doesn't shed any light on the issues before the Court.

The Court: Same ruling.

Mr. Embry: We except, if the Court please.

(Letter, dated January 23rd, 1959, to Mr. Don McKee, The Montgomery Advertiser, Montgomery, Alabama, from Harold Faber, Day National News Editor, offered and received in evidence and identified as Plaintiff's Exhibit No. 72.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, referring to Plaintiff's Exhibit No. 72, are the "rules for our correspondents" which you have mentioned in that letter the same as the rules for correspondents previously introduced in evidence as Plaintiff's Exhibit No. 3?

A. Yes, sir.

Q. All right. Now, Mr. Faber, I show you a letter dated January 7th, 1957 and ask you to identify that, if you will.

A. This is a letter—this is the duplicate of a letter dated [fol. 168] January 7th, 1957 from me to Mr. James H. Strickland and it says, "Mr. James H. Strickland, Birmingham Post-Herald, Birmingham, Alabama. Dear Mr. Strickland: I'm sorry, but we already have a correspondent in Birmingham, who has been doing fine work for us and, of course, we have no plans for making a change. Sincerely, Harold Faber, Day National News Editor."

Mr. Nachman: If the Court please, we offer this letter dated January 7th, 1957 into evidence to be marked and identified as our next exhibit.

Mr. Embry: If the Court please, we object to that on the grounds that it is incompetent, irrelevant and immaterial and is too remote in point of time to shed any light on the issues on the inquiry before the Court.

The Court: Same ruling.

Mr. Embry: We except, Your Honor.

(Letter, dated January 7th, 1957, to Mr. James H. Strickland, Birmingham Post-Herald, Birmingham, Alabama, from Mr. Harold Faber, Day National News Editor, offered and received in evidence and identified as Plaintiff's Exhibit No. 73.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, is the word "correspondent" referred to in Plaintiff's Exhibit No. 73 Mr. John Chadwick?

A. Well, I assume that Mr. Chadwick was with us on those dates, yes.

Q. Mr. Faber, I show you another letter dated March 25th, 1957 and ask you to identify that for us.

A. This is a letter from me dated March 25th, 1957 to a Mr. H. D. Cullen and it reads as follows: "Mr. H. D. Cullen, 753—9th Avenue West, Birmingham 4, Alabama. Dear Mr. Cullen: I'm sorry but we already have a correspondent in Birmingham, who furnishes all the stories we need. Very truly yours, Harold Faber, Day National News [fol. 169] Editor."

Mr. Nachman: If the Court please, we offer this letter dated March 25th, 1957 into evidence.

Mr. Embry: We object to that, if the Court please, on the grounds that it is incompetent, irrelevant and immaterial and is too remote in point of time—

The Court: Same ruling.

Mr. Embry. We except.

(Letter, dated March 25, 1957 to Mr. H. D. Cullen, 753—9th Avenue West, Birmingham 4, Alabama, from Mr. Harold Faber, Day National News Editor, offered and received in evidence and identified as Plaintiff's Exhibit No. 74.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, I show you two documents clipped together and ask you to identify those and read them if you will.

A. The first one is a duplicate of a letter, I assume by me, dated February 24th, 1957 and it says, "Dear Mr. Brown: A check for that story will be forthcoming, but it may take two or three weeks to get to you because of bookkeeping problems. Thanks for letting me know about it; we certainly would have authorized the payment sooner if someone hadn't neglected it. Sincerely." The second one is a letter on Montgomery Advertiser Company stationery dated February 21st, 1957 addressed to The National News Desk, The New York Times, New York, New York and it says, "Gentlemen: On December 21st, 1956, at the request of Bill McDonald who was at that time your correspondent here, I filed an 800 word round-up on the first day of Montgomery bus integration. Mr. McDonald advised me at that time that I would be paid directly by you, but to date

I have not received payment. Feeling certain that this is due to oversight rather than any intentional neglect, I call this to your attention. Very truly yours, Hy Brown."

[fol. 170] Mr. Nachman: If the Court please, we offer these two letters into evidence to be identified as our next exhibit.

Mr. Embry: We object, if the Court please, on the grounds that they are incompetent, irrelevant and immaterial and too remote in point of time.

The Court: Same ruling.

Mr. Embry: We except, if the Court please.

(Letter, dated February 24th, 1957, addressed to Mr. Brown and unsigned; and letter, dated February 21st, 1957 to National News Desk, The New York Times, New York, New York, from Hy Brown, offered and received in evidence and identified as Plaintiff's Exhibit No. 75.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, I have here photostats of checks which I assume were produced in response to the Court's order to produce which relates to the payment of stringers in Alabama and, again, we are willing to have them introduced in bulk and later have them marked and identified by the Court Reporter unless opposing counsel objects to that procedure.

Mr. Embry: Your Honor, I think I can save Mr. Nachman some time by eliciting from this witness on voir dire the fact that he had nothing to do with the actual checks. May I proceed, Your Honor?

The Court: Go ahead.

By Mr. T. Eric Embry: (Continuing)

Q. Mr. Faber, do you have anything to do in the line and scope of your duties as the National News Editor with the issuance of these checks other than to authorize the payment of a certain sum of money to these stringers?

[fol. 171] A. No, sir.

Q. All right. That's all.

Mr. Nachman: Is there any question about whether these checks were produced in response to the Court's order?

Mr. Embry: Well, if they came out of the big box over there—

Mr. Nachman: They came out of the big box and were contained in a little envelope.

The Court: Well, I will hold that they are admissible subject to all legal objections.

Mr. Nachman: We would like to introduce them then—

Mr. Embry: If the Court please, we object to them in bulk for the same reasons previously stated. If my recollection serves me, on the motion to produce, these checks are for a period of time beginning in January, 1956 through a period in April or May of 1960 and, of course, each particular check bears a different date and they are to different individuals and we say that the introduction of these checks in bulk is incompetent, irrelevant and immaterial and there is no showing that they are pertinent or relevant and no showing that they relate to a period of time relevant to the inquiry before the Court as to the question of whether or not this defendant was doing business in the State of Alabama within a reasonable length of time beginning in April 26th, 1960—

The Court: Well, do we assume that the payees of each one of these checks which you call a stringer or a staff correspondent—do we assume that they are the people testified about by Mr. Faber?

Mr. Nachman: Yes, Your Honor.

The Court: Well, let me let them in subject to all legal objection.

Mr. Embry: We except.

Mr. Nachman: We will stipulate that the defendant can make any objection at any time in regard to any check just as though each check were introduced individually at this time.

[fol. 172] The Court: Well, I will let them in.

Mr. Embry: We except. It will take the Reporter some time to mark these and, Your Honor, inadvertently Your Honor referred to these as payments to staff correspon-

dents or stringers. And I would like to point out to Your Honor that there are none of these checks that represent a payment to staff correspondents—

The Court: Do they represent payments to the so-called stringers or somebody like that?

Mr. Nachman: They all relate to payment to stringers.

Mr. Embry: That's right.

The Court: Well, I think they are admissible.

Mr. Embry: We except, if the Court please, and we wish to object on the further grounds that they have not been identified, Your Honor.

The Court: All right. Proceed.

(Cover letter from Beddow, Embry and Beddow, 204-211 Massey Building, Birmingham 3, Alabama to John R. Mathews, Court House, Montgomery, Alabama, dated July 13, 1960; and photostats of checks Nos. 059948, 006633, 075166, 025638, 107332, 088921, 059950, 094743, 049538, 114007, 013553, 006634, 052407, 082352, 075170, 031162, 097062, 073852, 066495, 097149, 089869, 019396, 040672, 075249, 082428, 031243, 052487, and 039356, offered and received in evidence and identified as Plaintiff's Exhibit No. 76.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, I show you a document photostat of a page of The New York Times dated March 11th, 1956 and I ask you what that is?

Mr. Embry: We object to any reference to that article because it is too remote in time and—

The Court: What is the date of the publication? Does [fol. 173] that show there?

The Witness: Yes, sir. It is dated March 11th, 1956.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Would you state to the Court what that is or what this looks like?

A. This looks like a photostat of an advertisement in The New York Times by the New York Times.

Q. The New York Times ran that ad itself in The New York Times. Is that correct?

A. Yes, sir. It is about an upcoming story on desegregation and it has some typed matter and material and some pictures of ten different reporters for The New York Times.

Q. What is the subject matter of the ad? Would you read that, please?

Mr. Embry: If the Court please, we object to that. There is no showing that it is relevant in any respect either in point of time or subject matter and Your Honor can see that by reading it yourself.

The Court: What is the particular relevancy of that, Mr. Nachman?

Mr. Nachman: The ad, Your Honor, relates to the News gathering activities of ten top reporters of The New York Times in the South and there are pictures of these reporters and statements as to what the news gathering activities will be and we think that it shows that not only does The New York Times send its staff reporters into Alabama but it advertises the fact that it does do that and makes capital out of it and presumably hopes that its readers will buy The New York Times in order to find out what its staff reporters have to say about Alabama, among other things.

Mr. Embry: I might point out, Your Honor, that there is no reference at all to Alabama in that article.

Mr. Nachman: I will tie that up too, Your Honor.

The Court: Let me read the article. I think it will be admissible and I will give you an exception to each paragraph or sentence or—

[fol. 174] Mr. Embry: We except, if the Court please.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, would the State of Alabama be included in "17 southern states" as the phrase is used in this ad?

Mr. Embry: We object to that, if the Court please. The document speaks for itself for whatever probative value it may have.

The Court: Well, if he knows. Of course, if he doesn't know, he cannot answer.

The Witness: Well, Alabama I would assume is included in seventeen southern and southwestern states.

The Court: How many Southern States is that? Seventeen?

The Witness: Southern and Southwestern, Your Honor.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. As a matter of fact, George Barrett came into Alabama and wrote stories about Alabama, did he not?

Mr. Embry: We object to that, if the Court please. No predicate has been laid with reference to when Mr. Barrett came into Alabama.

The Court: Does Mr. Barrett's picture appear there?

Mr. Nachman: Yes, sir.

The Witness: That's right.

The Court: I will let it in and give you an exception.

Mr. Embry: We except, if the Court please.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Did he?

A. Mr. Barrett has been in Alabama on stories. Yes, sir.

Q. Has Mr. Clarence Dean also been in Alabama and written stories whose picture appears also in this ad?

A. Yes, sir.

Mr. Embry: We object to that, if the Court please, and [fol. 175] move to exclude the answer—

The Court: Overruled.

Mr. Embry: We except.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Has Peter Kihss, whose picture appears in this ad, also—

A. Yes, sir.

Mr. Embry: We object to the question and move to exclude the answer—

The Court: Overruled.
Mr. Embry: We except.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Has Mr. John N. Popham, whose picture appears in this ad also—
A. Yes, sir.

Mr. Embry: We object to that, if the Court please. We object to the reference to Mr. Popham as there has been no specific time mentioned—
The Court: I will let it in and give you an exception.
Mr. Embry: We except.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Did you answer the question?
A. I said, yes. Yes, sir.
Q. Has Mr. Russell Porter, whose picture appears in this ad—

Mr. Embry: We object to that. There is no specification as to when or where and—
The Court: Overruled.
Mr. Embry: We except.
The Witness: Yes, sir.
Mr. Nachman: We offer this in evidence to be marked and identified as our next exhibit.
Mr. Embry: We renew our objection, if the Court please.
The Court: Overruled.
[fol. 176] Mr. Embry: We except.

(Advertisement, The New York Times, Sunday, March 11, 1956, regarding "What the South is doing about desegregation" and ten photographs of New York Times reporters, offered and received in evidence and identified as Plaintiff's Exhibit No. 77.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, have you now during the course of your cross examination and direct examination detailed all of

the services performed by Alabama stringers for The New York Times?

Mr. Embry: If the Court please, we object to that question. It presupposes and assumes that there are services performed. That is a question for the Court, if the Court please.

The Court: I think that is admissible—

Mr. Embry: It invades the province of the Court and doesn't call for what was done or what was not done—

The Court: I will let it in and give you an exception.

Mr. Embry: We except.

The Witness: May I have that question repeated, please?

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Have you, during the course of your direct and cross examination up to this time detailed all of the services performed by the Alabama stringers or are there other services that you have not detailed, that is, services that relate to The New York Times?

Mr. Embry: Same objection, Your Honor.

The Court: Same ruling.

Mr. Embry: We except.

The Witness: I think I explained them all.

[fol. 177] By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Was any request made to Don McKee after a demand for retraction was made to The New York Times in this law suit to investigate in any of the matters contained in any letter of retraction which you may have received and by you, I mean The New York Times, from the plaintiff in this case?

Mr. Embry: We object to that, Your Honor. It is a privileged communication and concerns an investigation made for the purpose of defending against this litigation that we are presently engaged in—

The Court: I will let it in.

Mr. Embry: It is also incompetent, irrelevant and immaterial. We except, Your Honor.

Mr. Nachman: You may answer.

The Court: We have an Alabama statute but I don't believe it covers this situation—

The Witness: Of my own knowledge, I have none.

Mr. Nachman: You do not know.

The Witness: Of my own knowledge.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Do you know whether or not Don McKee sent in to The Times a telegram purporting to be the result of such an investigation?

A. I was told he did so. I didn't see it.

Mr. Beddow: We move to strike that answer, if the Court please.

The Court: Same ruling.

Mr. Beddow: What was that, Your Honor?

The Court: Same ruling.

Mr. Beddow: We except, if the Court please.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Was he paid for doing so?

[fol. 178] Mr. Embry: We object to that question, Your Honor.

The Court: I will let it in.

Mr. Embry: It is a privileged communication and it occurred after the demand for retraction which was made pursuant to the Alabama statute as a predicate to filing a libel suit and represents the defendant's investigation for the purpose of the preparation of his defense to the action—

The Court: Overruled.

Mr. Embry: We except.

Mr. Nachman: Now, let me ask you—

Mr. Embry: We offer to prove, Your Honor, that that was a request—that investigation was made at the request of general counsel for The New York Times Company, an attorney representing the company at the time he made the request and is a product of the attorney's investigation and report constituting a part of his file with reference to

the defense of this action with which we are presently concerned.

Mr. Baker: If the Court please, one of the issues in this case is the sufficiency of the service on Don McKee and the Supreme Court of the United States held in the International Shoe case that one of the tests of sufficiency is whether or not it would be reasonable to expect this particular agent to communicate the fact that the summons was served on him. Now, we propose to show that the very agent who was served with a summons and complaint was the same agent that this defendant called on to investigate the truth of the matters involved in this summons and complaint and all of this happened before suit was filed. It is clearly relevant on the question of doing business and on the authority and scope of the activities of Don McKee, the person who was served with process and who this witness just testified—he has outlined all of his activities. Now, we propose to show an activity that has occurred and we think it is clearly relevant both on the sufficiency of service and on the question of the authority of McKee and the scope of his duties with The New York Times.

[fol. 179] The Court: You have the close, Mr. Embry.

Mr. Embry: I have made my statement, Your Honor.

The Court: Well, I believe it has evidential value and I will let it in subject to all objections.

Mr. Embry: We except, Your Honor.

Mr. Nachman: Your answer was then that you assumed he was paid?

The Witness: I didn't answer it.

Mr. Nachman: Excuse me. I thought you answered the question.

The Witness: The question was, I assume, was he paid?

Mr. Nachman: Yes.

The Witness: And the answer is—

Mr. Nachman: Well, we will let the Court Reporter read the question. Read the question, Mr. Reporter.

The Reporter: Question: "Was he paid for doing so?"

The Witness: I assume he was. I didn't authorize the payment.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, do you know a Mr. Robert Garst?

A. Yes, sir.

Q. What is his position, if any, with The New York Times, the defendant in this case?

A. He is an Assistant Managing Editor of The New York Times.

Mr. Nachman: Your Honor, at this time we would like to introduce into evidence a telegram which was brought here this morning by Mr. Martin pursuant to a subpoena duces tecum and with the Court's permission I would like to read it to the Court.

Mr. Embry: We object to the introduction of that telegram, Your Honor.

The Court: Who does the telegram purport to be from?

Mr. Nachman: The telegram, Your Honor, purports to be to Mr. Robert Garst, who this witness has identified as [fol. 180] being the Assistant Managing Editor of The New York Times.

The Court: Who is the telegram supposed to be from?

Mr. Nachman: The telegram purports to be from Mr. Don McKee of Montgomery, Alabama.

Mr. Loeb: Your Honor, may I be heard?

The Court: I will be glad to hear from you, Mr. Loeb.

Mr. Loeb: If Your Honor please, on this subject, I would like to be heard because this telegram results from my own actions. I am general counsel for the New York Times in New York. When the letter was received demanding a retraction and apology by reason of an ad which we published and which we did not originate, naturally I wanted as a lawyer for the client to request an investigation to find out the correctness of the facts surrounding the circumstances depicted in that ad and to check their veracity. I asked the Assistant Managing Editor of The New York Times if he could wire somebody in Montgomery and get some information for me so that I could reach a decision on the basis of which I could advise my client, the defendant in this case. This telegram was a result of that inquiry and was intended for me and upon its receipt was

delivered to me as counsel. Now, Your Honor, I submit that if counsel has any privilege whatsoever that he has a privilege to direct an investigation and not have the result of that investigation introduced into evidence in a collateral motion as to whether or not The New York Times is doing business in Alabama.

Mr. Embry: May I ask your Honor to swear Mr. Loeb and let me get his statement in the Record under oath officially—

The Court: Well, we usually do not swear lawyers in Alabama as they are under oath—

Mr. Nachman: Your Honor, there is not a word on this telegram that mentions any counsel at all.

The Court: Let me look at the telegram a minute and if I see anything I ought not to see, I will strike it out.

Mr. Nachman: Here is the telegram, Your Honor.

The Court: All right. Now, what do you say in answer [fol. 181] to Mr. Loeb's argument?

Mr. Nachman: Your Honor, I repeat in summary just what Mr. Baker has said before. It is relevant on two issues. First of all, the status of Mr. McKee with The New York Times—

The Court: As to whether he was an agent or not?

Mr. Nachman: Yes, sir. Mr. Baker said that the Supreme Court in the International Shoe case said that one of the questions in the matter of due process which they raised in this case and, of course, the Warren Paint Company case equates our substitute service statute with the scope of due process and says one of the issues here on due process is whether the agent on whom service was had is sufficiently close, so to speak, to his principal, the foreign corporation, that it is reasonable to assume that he will communicate that fact to his principal so that that principal will have a reasonable opportunity and reasonable notice and an opportunity to defend the law suit. Now, we have also the fact that The Times is attempting to underplay the role of these stringers and to say that these residents in Alabama are not agents of this company and that they are not connected with this company but when they were sent a demand for retraction, the man they called on to

investigate the facts was this very stringer, Don McKee, in Montgomery, and this is evidence of the fact that he sent this communication in and we intend to introduce as our next exhibit from Mrs. Lord Day and Lord to the plaintiff in this case referring to an investigation. It is obvious from Mr. Loeb's statement that the investigation referred to in the next exhibit, which we will be happy to show Your Honor at this time, is the investigation consisting of that telegram to Don McKee or the telegram which Don McKee sent in. We think it is relevant on the matter of agency. There is no privilege involved at all. This is a communication from Don McKee to The New York Times and what The New York Times did with it after they got it and whether they conferred with counsel about it or whether they didn't, we are not advised and we are not asking about the details of this conference between The New York Times and Mr. Loeb. We subpoenaed this document which we have a right to do and [fol. 182] there it is. As we had a right to do under Alabama law and it shows a very substantial relationship between Don McKee and The New York Times and we think it is entirely relevant on that point and it can be no privileged communication between an agent and its principal and that's what we think we have here.

Mr. Embry: If it please the Court, we think very definitely that it is privileged and not only that, even if you concede, which we don't, that it could have any relevancy on the question of McKee as an agent, then the only thing about it that would be relevant would be the fact whether or not he did that and not what the contents of it was or what the subject matter of the communication was, but if it had any relevancy at all, it could be only whether or not he did do that thing or not, and not what is contained in the telegram, which is clearly a privileged communication.

The Court: You are saying that the contents might not be admissible—

Mr. Nachman: The contents show the scope of the activity of the agent in response to a request made by the principal, The New York Times, to investigate. It shows

all of the things he did in pursuing that activity for his principal and we haven't yet heard about what privilege we are being referred to. Is it the attorney-client privilege we are talking about or just what?

Mr. Embry: The communication between an attorney and his client or the product of that client's investigation—

The Court: It is a question between the common law rule and our statute. We have two different statutes on this question.

Mr. Embry: Another rule of law with respect to the product of an individual's own efforts in his file for the purpose, that is, created for the purpose of defending or prosecuting litigation which no Alabama Court has ever held to be admissible or available to the other side no matter where it may be found.

Mr. Loeb: If the Court please, I would like to say one more thing—

The Court: Go right ahead, Mr. Loeb.

[fol. 183] Mr. Loeb: I suppose counsel would have been perfectly justified in making an independent investigation and hiring a detective to come down here. It was five days that we had to do this and I don't suppose if a detective had been hired to come down here to make this investigation that that would have made him an employee of the New York Times or make The New York Times doing business in the State of Alabama. Now, the fact that we conceded that Mr. McKee was a string correspondent of The New York Times in the State of Alabama and when we wanted some information I naturally asked the Managing Editor of The New York Times to inform me—I had no knowledge about the correctness or incorrectness of any statements which were contained in that ad which The New York Times hadn't prepared and they naturally communicated with their string correspondent down here and asked for a report. That is perfectly evident. Our objection is that the contents of the report which were made pursuant to my request as counsel which was immediately upon receipt transmitted to me and communicated to me as counsel and I say that it is privileged and even though they may have some relevancy for the purpose, they are still privileged

and it should not be admitted in this kind of a collateral motion. I can understand an argument about it if we should ever get to a trial on the merits in the case but on this motion as to whether or not The Times is doing business, I really respectfully submit that it is carrying things to an extreme to say that an answer to a request for an inquiry as to the correctness of facts with regard to which we have been asked to give a correction and an apology is evidence that the man on whom we called for that investigation—it makes The New York Times subject to the jurisdiction of the State of Alabama because it is doing business in Alabama in asking him for a report.

Mr. Baker: Your Honor, they have brought up several things that we haven't had a chance to argue about. The kind of privilege that they are talking about comes into the picture when we try to get it out of their file. Now, we didn't get this telegram out of their file. We got this telegram from the Western Union by subpoena duces [fol. 184] tecum, the agency of transmission elected by their agent, Mr. McKee. They say they could have hired a detective. We say they didn't need to hire a detective. They had a trusted and loyal employee an agent which they could call on to do this job and whom they called on to do this job and they now disavow him and they say he is an independent contractor and he has got no connection with The New York Times and he doesn't do anything except furnish a little story when we call upon him, but they think enough of him to have him investigate a libel suit of this magnitude. They don't need a detective, they don't need an investigator, they don't need a lawyer. They had their own agent and they called on their own agent and what their own agent did and what he did at their request and what he transmitted and when we obtained it from other non-privileged sources is not privileged under any stretch of the imagination.

Mr. Embry: Your Honor, that wouldn't be any more valid than to contend, and I certainly don't think they would contend, that by the employment of our firm to represent The New York Times Company here that they make us as attorneys or characterize us as agents of The

New York Times for the purpose of indicating whether they are doing business when we are acting for them in this litigation. I just cannot see the validity of the argument, Your Honor. Privilege, as we pointed out, and I will not belabor Your Honor on that score, but if Your Honor were to decide that privilege didn't extend to excluding evidence of the fact that something was done, I still say to Your Honor even if you take that view, that the contents of the communication which was the direct consequence of an action initiated by their own general counsel is both privileged and could not be relevant to the inquiry before the Court.

The Court: I think argument on the question has been very ably presented to the Court. It is the Court's opinion that it is not privileged and you may have an exception to the Court's ruling.

Mr. Embry: We except, Your Honor.

Mr. Nachman: May I read the telegram, Your Honor?

The Court: Go ahead.

[fol. 185] Mr. Nachman: It reads as follows, Your Honor. "To Mr. Robert Garst, Assistant Managing Editor, The New York Times, Times Square, New York 36, New York. Re Info Request: Alabama State College sources are Dr. H. Council Trenholm, President, and Dr. Levi Watkins, Director of the Business Office which issues meal tickets, controls food and dormitory accommodations." Dr. Trenholm: "Absolutely no truth that the dining hall was 'padlocked' to 'starve students into submission.' I don't understand through what source, malicious or otherwise, that statement came." Trenholm further refutes reference to "entire student body refusing to re-register." Factually incorrect. Dr. Watkins (Personal interview and he has records to back up this): Gave background to situation: Quarter ended on Friday, March 4. Pre-registration was March 2-5. Standard procedure for students to register officially with business office by March 10. Under standard rules students required to have meal tickets (actually privilege card for both meals and dorms), which are valid by quarter. Temporary cards issued up through March 9; no further cards issued except on basis of actual registration. "Meal courtesies were extended to all (repeat all) students

through Sunday, March 6." "Two days after winter quarter ended." "The business office remained open all day Saturday and Sunday (March 5 and 6) to enable students to either register or make arrangements for privilege card." "As to entire student body" refusing to re-register as protest, college records show 1,182 of the approximately 1,900 students had pre-registered prior to the quarter's end March 4. On Monday (March 7), first day of the supposed protest, 214 students followed through on registration; on Tuesday, 194 more did so and by Wednesday a total of 803 had taken steps toward permanent registration. Dr. Watkins said emphatically the dining hall was never "padlocked"—except for being locked up at night as usual. No students who wanted meals were refused; those who had no privilege cards could have bought meals. "A number of students, who during the week simply stayed on and took no steps to register—those people didn't eat as far as the dining hall was concerned." (If students don't register, they aren't considered students.) "It is conceivable that [fol. 186] some students who for their own reasons did not choose to re-register or to request temporary campus living accommodations prior to their decision to register, were without college meal service," said Watkins. "The college presumed to serve those students who had actually registered for the quarter or who requested living accommodations, including meal service, which were available with or without the actual payment of fees and tuition prior to the deadline," he continued. There were about seventy-five students who never re-registered but who were given both meal and room privileges, Watkins said. Any number of student witnesses can be produced to prove the falsity of the "padlocked" statement, he said. As to expulsion of students, this was on grounds of their insubordination in refusing to stop demonstrations on orders of Trenholm and other officials—this is the official stand of the college. As to truckloads of police, etc., City police entered the campus only after a mob of students had threatened the building—and—grounds custodian (Negro) who tried to prevent an on-campus demonstration on orders of the President. A college police officer fired his pistol into the air in an effort to quiet the mob before a passing city

patrol car intervened. The police were actually seeing that orders of the officials were carried out. As to King's police record here: Montgomery Police files show two arrests. On January 26, 1956, he was arrested for speeding, released on bond, convicted and fined $10 which he appealed and later paid, and on September 3, 1958, he was arrested for loitering, released on his own bond, fined $14 which was paid by the Police Commissioner. In neither case was he jailed. King has been twice arrested by Montgomery County Sheriff's officers, on February 22nd, 1956, for violation of State boycott law, and on February 29, 1960, on charge of Income Tax Return Falsification. Total of four arrests. As to demonstrations, on Sunday, March 6, several hundred Negroes, including some students, attempted march to capitol in direct violation of Police warning against it; police proceeding on basis of preserving order, that is, averting race-riot, well within legal rights. Contrary to statements, the City, County, State police averted riot and saved lives no doubt of Negroes who at one point appealed [fol. 187] to State Public Safety Director for instructions and advice on how to leave the scene. Not one Negro was arrested during near-riot or attempted demonstration. Don McKee, Montgomery, Alabama." We offer this in evidence, if the Court please.

Mr. Embry: We renew our objections and point out to Your Honor that the contents of that communication just recited to Your Honor and into the Record demonstrates that it shed no light on the activities of McKee or on the question of whether or not he is an agent for this defendant but constitutes, in fact, an appeal to Your Honor's emotions and that is what it is designed to do—

The Court: I overrule the objections.

Mr. Embry: We move that it be excluded, if the Court please.

The Court: Overruled.

Mr. Embry: We except to the Court's ruling.

(Four page telegram, dated April 14, 1960, to Mr. Robert Garst, Assistant Managing Editor, The New York Times, Times Square, New York 36, New York, from Don McKee, Montgomery, Alabama, offered and received in evidence and identified as Plaintiff's Exhibit No. 78.)

(Court recessed at 1:30 P. M. and reconvened at 3:15 P. M.)

Mr. Embry: If the Court please, we want the Record to show that during the morning session, Mr. Clark of the firm of Lange, Simpson, Robinson and Sommerville, prominent attorneys of Birmingham, who represent the three City Commissioners of the City of Birmingham in a libel action against this same defendant in the United States District Court was exchanging information or conferring with the attorneys for this plaintiff in this cause and whether [fol. 188] or not he is in this case, I don't know, but I would like the Record to indicate his presence and that of the Assistant Attorney General, Mr. John Tyson.

The Court: All right. The Record so indicates.

Mr. Baker: Your Honor, since when does the Record have to show the spectators in the Court Room?

The Court: Well, they are sort of honorary spectators being members of this Bar and if he wants it in the Record—

Mr. Baker: Well, it is just a new one on me, Your Honor.

Mr. Beddow: It is not a new one on you to let the Record show the truth and facts about the circumstances that might be important later, is it, Mr. Baker?

Mr. Baker: I have never known any Record to show the spectators present in the Court Room.

Mr. Beddow: Well, we are not talking about spectators and you know—

The Court: Well, in order to hold it down, we are going to let it be in the Record if they want it.

Mr. Embry: The passing of the answers to the interrogatories in the United States District Court from Mr. Clark to Mr. Nachman when Mr. Nachman was examining the witness, Mr. Faber—

The Court: Well, why not let the Court adhere to its ruling that it may appear in the Record. Go ahead.

Mr. Nachman: May I go on now or do you have more you want to put into the Record.

Mr. Embry: Go ahead.

Cross examination. (Continued)

By Mr. M. R. Nachman, Jr.:

Q. Mr. Faber, sometimes a news story in the New York Times is headed with a slug, "Special to The New York Times." You are familiar with that kind of slug, are you not?

A. Yes, sir.

[fol. 189] Q. Would you explain to the Court what that phrase is designed to connote?

A. Well, it means that it is not one of the wire stories from the AP or the UP and it may either be—it shows that the story originated somewhere else rather than New York.

Q. Well, assuming, as I say, if it has a Montgomery, Alabama date line it would have originated there?

A. It would have indicated that the information in the story originated from wherever the dateline was but we would not use a Special unless there was a dateline on it.

Q. Now, what does it mean positively?

A. The term Special means that it was something other than a wire services. In other words, it was special information to The Times from someone else besides the wire services.

Q. Would it be used to accompany a story that was sent in by a string correspondent?

A. Yes, it would.

Q. Would it be used in any other circumstance positively?

A. No.

Q. Would it be used to accompany a story by a staff correspondent of The New York Times?

A. It might, yes.

Q. Does The New York Times, in the course of its business, sell to other newspapers any of its special stories?

A. The Times has a news service which sells to other newspapers.

Q. Does it just sell special stories or does it also sell wire service stories?

A. No, it does not sell wire service stories.

Q. So, the stories that are sold by The New York Times are in connection with its wire service?

A. Yes, sir.

Q. Are the stories that are sent in by the staff correspondents—these are the stories sent in by the staff correspondents and stringers. Is that correct?

[fol. 190] A. And its local reporters too.

Q. And the local reporters.

A. Yes, sir.

Q. And I assume it charges such newspapers who buy such stories.

A. I assume so.

Q. Is that correct?

A. Well, I am not directly connected with the news service. It is a separate operation.

Q. Well, do you know as a result of your work with The Times over a period of years whether it gives those stories away or sells them?

A. I assume it sells them.

Q. Now, Mr. Faber, you mentioned collect calls from the stringers to The New York Times in your direct testimony. Now, suppose a stringer calls in a story to The New York Times or wires it in, and in either event, sends it in collect, and suppose also that The New York Times does not accept that story for publication, does The New York Times honor the collect charge?

Mr. Embry: We object to that, if the Court please. It is not confined to any particular time and it is not relevant to the issues before the Court—

The Court: I will let it in and give you an exception.

Mr. Embry: Sir?

The Court: I will let it in and give you an exception.

Mr. Embry: We except. I further object on the grounds that it is not confined to the stringers in Alabama.

Mr. Nachman: Well, I will limit it to those.

The Court: Go ahead.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. As so limited, would you answer the question, Mr. Faber?

A. We would pay the collect costs.

Q. Even though a story from Mr. Chadwick or Mr. McKee or Mr. Castle was not accepted for publication. You would still pay the collect charge.

[fol. 191] A. Yes, sir.

Q. Am I correct, Mr. Faber, in stating that The Times has a system whereby stories can be telephoned in and recorded on a recording machine in New York by staff correspondents or stringers in Alabama?

Mr. Embry: We object to that, Your Honor. It is not predicated on the facts in evidence and doesn't call for an answer relating to any activities within the State of Alabama within a period that might be pertinent to this inquiry before Your Honor today.

Mr. Nachman: Your Honor, I am simply asking if they have a recording machine.

Mr. Embry: And no time has been set—

The Court: Well, you will have to get it within a reasonable length of time.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Do you presently and have you had for the last four years a recording machine in New York which is used to record, among other things, stories that are sent in by staff correspondents and stringers who are located outside of New York?

Mr. Embry: We object to that because it is not confined to what may have been done or what may not have been done in the State of Alabama within the period of time pertinent to the inquiry before Your Honor.

The Court: I think you will have to lay a little more predicate if you want to get it in.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Do Alabama stringers and do staff correspondents who come into Alabama phone in stories for recordation on any machine in the offices of The New York Times in New York?

Mr. Embry: We object to that because he has not inquired as to whether that actually happened, and if so,

within what period of time and that period of time being [fol. 192] pertinent to the question before Your Honor.

The Court: I will let it in and give you an exception. If it isn't connected up in all of those details, we will throw it out.

Mr. Nachman: You may answer.

The Witness: Yes. They do record stories in New York.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. As a matter of fact, you give that number to the stringers situated in Alabama and have done so over the past four years as part of their instructions, have you not?

A. Yes, sir.

Q. They call at a certain hour and call on this number so that it can be recorded on a machine. Isn't that correct?

A. Yes, sir.

Q. Or do they always call and utilize the machine at any hour?

A. Whenever a machine is open, it is open for use.

Q. They are given a number with which to call in order to get on the machine, are they not?

A. Yes, sir.

Q. By the term "they", I mean the stringers located in Alabama.

A. Yes.

Q. I believe you have already testified, Mr. Faber, that you are familiar with the fact that over the last four years up to the present time regular staff correspondents of the New York Times have from time to time come into Alabama to gather news stories.

Mr. Embry: We object to a question that calls for an answer relating to a period covering four years as being too remote, Your Honor. It is too remote to the inquiry before the Court.

The Court: I will let it in and give you an exception.

Mr. Embry: We except, if the Court please.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Are you familiar with that?

A. Yes, sir.

[fol. 193] Q. Are you familiar with the expense accounts which they turn in?

A. No, sir.

Q. You don't see the expense accounts?

A. No, sir.

Q. Who is in charge of that department?

A. Well, there are two people. First, somebody in the auditing department and the other is Mr. Garst who approves them.

Q. Are either of those gentlemen here today?

A. No, sir.

Q. Is there a Mr. Nuhut who has anything to do with that?

A. Yes, he is in the auditing department and in charge of expense accounts.

Q. Is he here today?

A. No, sir.

Q. But you are the man in charge of the trips they make into Alabama and you send them in on assignments.

A. Yes, sir.

Mr. Nachman: Your Honor, we have a series of documents here which are expense accounts for certain individuals and these documents were produced in response to the Court's order and we would like to introduce them at this time after having identified the person submitting them which we will do by Mr. Faber as being a staff correspondent.

The Court: All right. Let Mr. Embry look at them.

Mr. Embry: We object to them, Your Honor, unless he shows the relevancy of them.

The Court: Are they dated?

Mr. Nachman: Yes, sir. They are dated and they show the places where they have gone in Alabama and how much the expense was and whether or not they were paid.

Mr. Embry: Your Honor, of course, there is no identification as to what these purport to be and they certainly do not speak for themselves.

The Court: Let me see one of them. I will not look at [fol. 194] but one.

Mr. Embry: You may look at any of them you want to, Your Honor.

The Court: I believe we have had some testimony about Claude Sitton.

Mr. Nachman: Yes, sir.

The Court: He was not a stringer but what you called a staff correspondent?

Mr. Nachman: A staff correspondent, Your Honor, and the testimony was that he is at present the Southern correspondent of The New York Times. Now, Your Honor, Item Seven of the Motion to Produce—

The Court: What does Item No. 7 say?

Mr. Nachman: Item 7 asks for all documents and writings constituting expense accounts or statement of expenses submitted for or in behalf of the following individuals or any other agents, servants or employees of the Times relating to expenses incurred by them in the State of Alabama since January 1st, 1956 and then there appears a list of names.

Mr. Embry: That doesn't make them admissible, Your Honor, the fact that he made a Motion to Produce these documents which we have done—

The Court: I feel that the fact that they were produced—

Mr. Nachman: Your Honor, we have a case on it if they want to make a point out of it.

Mr. MacCleod: Your Honor, we produced a whole truck load of documents and how they can pick out a few and say they are expense accounts when this witness has specifically testified that he cannot tell—

Mr. Nachman: Your Honor, we have an authority in 84 Ala., 493 at Page 495, which says that when documents are produced by a party in response to an order of the Court that they are admissible without further identification on the theory that the party so producing admits by the production that they are correct records of the company. [fol. 195] Mr. Embry: Well, we produced those under protest as Your Honor will recall—

The Court: I understand that you produced them but you protest the admissibility of them—

Mr. Embry: I do, Your Honor, and I even question the propriety of our having been required to produce them but we have already passed that question and—

Mr. Nachman: You went all the way to the Supreme Court on that—

Mr. Embry: And we will go again, young man. Don't worry about that. It is just a question, Your Honor, and if you are going to permit these people to go all the way back to the birth of Christ—

The Court: Well, I am trying to limit it—

Mr. Embry: Permitting them to go into a four year period of time and into all these details when I can submit to Your Honor case after case which will conclusively persuade Your Honor, I am sure, that the time pertinent to the inquiry as to what this corporation may or may not have done in the State of Alabama is right at about the time of the service of process. This four year period is just—

The Court: Well, it looks like in order to show that someone is doing business in the State of Alabama, it covers a wide range. It is sort of like showing undue influence or something like that. It takes a lot of things to try to attempt to prove it. That was the theory the Court was going on there.

Mr. Embry: Let me submit this thought to Your Honor on that question.

The Court: Go ahead.

Mr. Embry: I view that thing as shown in the cases, if I may be permitted to argue it to Your Honor, that the pertinent time is about the time of the service of process and, of course, immediately before and immediately after might shed some light as to whether they were doing business at the time served, but a year prior to the time [fol. 196] served—of course, they may have been doing business. I am not saying in this case whether they were or not but it would not be pertinent as to whether they were doing business at the time of service.

The Court: Now, this particular voucher here says March 27, 1960. That's the date of this voucher before the Court.

Mr. Embry: I am not singling out that particular piece of evidence, Your Honor. I am going on the theory of Your Honor permitting them to go back for this period of

time and I am not saying that if properly identified that an expense account as of March 22nd, 1960 would not be admissible but for 1959, 1958, 1956 and 1957, I don't see how that period of time would have any admissibility. However, Your Honor, that document hasn't been identified to show whether it has any probative value or not other than the fact that we were made to produce it.

Mr. Nachman: Your Honor, Mr. Embry has made the same objections on the occasion when we argued on the Motion to Produce and the same objection was made to the Supreme Court when they sought mandamus to review that order and the same argument has been made over and over again this morning every single time we have introduced an item of evidence. Now, I think that they have made their point and Your Honor has ruled that a relevant period is important to this case to show a continuous course of conduct by this defendant and we think that the time of the Court and everyone's time is being wasted by arguing this same point every single time we introduce a document.

Mr. Embry: Well, I know that Your Honor does not have a closed mind on the law—

The Court: Oh, no. I try to keep it open all the time.

Mr. Embry: That's the reason I reiterate my objection when a particular type of document is offered into evidence.

The Court: Well, let me disagree with you and allow it in and give you an exception. I will let it in.

Mr. Embry: We except.

Mr. Nachman: May I ask Mr. Embry if there is any [fol. 197] question about the fact of whether these documents were submitted by the defendant in response to the Motion to Produce.

Mr. Embry: I don't know. I have never seen them, Your Honor. You will just have to prove them any way you can prove them. I am not going to aid you in doing that.

The Court: Well, you will have to go ahead and try to prove them if you can.

Mr. Nachman: All right, Your Honor. We offer these additional checks, if the Court please.

Mr. Embry: We object on the grounds previously assigned, Your Honor.

The Court: I will let them in and give you an exception.

Mr. Embry: We except.

(New York Times checks No. 161139, 137441, 218187, 001390, 006460, 010670, 002864, 019539, 017650, 016953, 008437
014051, 004378, and 016279, offered and received in evidence and identified as Plaintiff's Exhibit No. 79.)

(New York Times checks Nos. 161139, 137441, 218187, 001390, 006460, 010670, 002864, 019539, 017650, 016953, 008437
014051, 004378, and 016279, offered and received in evidence and identified as Plaintiff's Exhibit No. 80.)

(New York Times checks Nos. 161139, 137441, 218187, 001390, 006460, 010670, 002864, 019539, 017650, 016953, 008437
014051, 004378, and 016279, offered and received in evidence and identified as Plaintiff's Exhibit No. 81.)

(Reverse side of eleven checks, offered and received in evidence and identified as Plaintiff's Exhibit No. 82.)

(Reverse side of eleven checks, offered and received in evidence and identified as Plaintiff's Exhibit No. 83.)

(Reverse side of eleven checks, offered and received in evidence and identified as Plaintiff's Exhibit No. 84.)

[fol. 198] (Reverse side of seventeen checks, offered and received in evidence and identified as Plaintiff's Exhibit No. 85.)

(New York Times checks Nos. 161139, 137441, 145339, 005048, 003636, 210105, 002863, 188104, 194800, 176621, 016344, 021632, 007716, 008475, 006504, 023801 and 210018, offered and received in evidence and identified as Plaintiff's Exhibit No. 86.)

(New York Times Checks Nos. 161139, 137441, 145339, 005048, 003636, 210105, 002863, 188104, 194800, 176621, 016344, 021632, 007716, 008475, 006504, 023801 and 210018,

offered and received in evidence and identified as Plaintiff's Exhibit No. 87.)

(Reverse side of seventeen checks offered and received in evidence and identified as Plaintiff's Exhibit No. 88.)

(New York Times checks Nos. 161139, 137441, 145339, 005048, 003636, 210105, 002863, 188104, 194800, 176621, 016344, 021632, 007716, 008475, 006504, 023801, and 210018, offered and received in evidence and identified as Plaintiff's Exhibit No. 89.)

(Reverse side of seventeen checks, offered and received in evidence and identified as Plaintiff's Exhibit No. 90.)

Cross examination. (Continued)

By Mr. M. R. Nachman, Jr.:

Q. Now, Mr. Faber, I show you a document which has been identified as Plaintiff's Exhibit No. 91 for identification. It purports to be The New York Times expense statement, Southern News, is that a regular expense account of The New York Times?

A. A photostat of it.

Q. Well, a photostat of it.

A. Yes.

Q. Is it for Claude Sitton?

[fol. 199] A. His name is on it.

Q. Is Claude Sitton a regular staff correspondent of The New York Times?

A. Yes, sir.

Q. What period of time does it purport to cover?

A. February 25th through March 7th.

Q. All right, sir. Does it show on there any period of time when he was in Alabama?

Mr. Embry: We object to that, if the Court please. It is a conclusion on the part of the witness. The instrument speaks for itself, Your Honor. Any inference drawn from it—

The Court: Well, he can read it for the information of

the Court or I can read it myself to save time. Does it say anything about Montgomery, Birmingham or Mobile?

The Witness: It says, "February 27th, departed Atlanta, 6:00 P. M. by air, arrived Montgomery, Alabama at 7:30 P. M. CST. The 28th Montgomery, the 29th, Montgomery."

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Is there an indication of the year on there?

A. I don't see any.

Q. I call your attention to the date of 3-22-60 on the right hand side of this page identified as Plaintiff's Exhibit No. 91 for identification.

A. Yes. It says, "Week ending March 22nd, 1960."

Q. Go ahead.

A. It says, "March 6th, departed Atlanta by air, 8:00 A.M., arrived Montgomery, Alabama, 9:00 A.M. March 7th, departed Montgomery 9:15 P.M. by air, arrived Atlanta, 12:15 A.M."

Q. Does this document contain an itemization of expenses submitted by Mr. Claude Sitton to The New York Times for reimbursement?

Mr. Embry: We object to that, if the Court please. The witness testified he didn't know what was in the document. The document will speak for itself.

[fol. 200] The Court: Well, he can read to the Court if it shows such things or I can read it either one. Read it if you can.

The Witness: Well, Your Honor, there are a lot of figures on it about a lot of things.

Mr. Nachman: It certainly does contain a lot of figures and we are not insisting that you read it but it is perfectly apparent what it is but if counsel wants to object to it, then we have no alternative but to have it read.

The Court: Go ahead.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Go ahead, sir.

A. It says, "February 25th, departed Atlanta by air, 8:30 A.M. Arrived Chattanooga, Tennessee, 9:30 A.M.

Telephone $1.25. Automobile taxi $3.00. Meals, $6.67. Tips, $3.85. February 26th, departed Chattanooga 11:45 P.M. by air. Arrived Atlanta 1:00 A.M. February 27th. Telephone, $1.35. Automobile Taxi, $3.25. Hotel, $18.24. Meals, $8.25. Tips, $5.80. Entertaining news sources, $7.95. February 27th, departed Atlanta 6:00 P.M. by air, arrived Montgomery, Alabama at 7:30 P.M. C.S.T. Telephone 60¢. Automobile taxi, $3.50. Tips, $2.50. February 28th, Montgomery. $2.00 telephone. Auto and taxi, $5.50. Hotel, $7.21. Meals, $8.00. Tips, $2.70."

The Court: Wouldn't it be more reasonable and couldn't we save time by just showing trips to Montgomery without putting in taxi cab fare and meals and tips and so forth?

Mr. Nachman: Well, Mr. Embry, as I understood it, wanted everything read and we agreed to a shorthand rendition of—

Mr. Embry: My objection, Your Honor, was to asking the witness to interpret this thing. His interpretation of this instrument—

The Court: Well, let me do it this way. Let the Record show that the Court has read Plaintiff's Exhibit No. 91, Mr. Reporter.

[fol. 201] (The Court examines Plaintiff's Exhibit No. 91.)

Mr. Embry: Now, Your Honor, I call Your Honor's attention to the witness' testimony to the effect that he couldn't identify this instrument and he didn't know himself what it was and, therefore, we object to his being questioned about an instrument that he testified he knew nothing about.

Mr. Nachman: If the Court please, we offer this New York Times expense statement, dated March 22nd, 1960, into evidence to be identified as Plaintiff's Exhibit No. 91.

Mr. Embry: We object to it, Your Honor, on the further grounds that no proper predicate has been laid for the introduction or the identification of the instrument.

Mr. Nachman: I will make the statement for the Record and Mr. Loeb made a statement this morning that I obtained this statement out of a box produced in Court by The New York Times in response to this Court's order to produce.

Mr. Embry: That is not a self-proving instrument, Your Honor.

The Court: I will let it in and give you an exception.

Mr. Embry: We except, Your Honor.

(One New York Times expense statement of Claude Sitton, Southern News, dated March 22, 1960, offered and received in evidence and identified as Plaintiff's Exhibit No. 91.)

Mr. Nachman: Now, Your Honor, I will make the same statement for the Record about this series of documents which I am now offering in evidence.

Mr. MacLeod: Your Honor, we would like to make the further objection that this is going far beyond the bounds of cross examination—

The Court: I don't mind hearing both of you but we [fol. 202] have a rule here in our Circuit Court that one lawyer speaks at a time and when he is through another lawyer takes over—

Mr. MacLeod: Pardon me, Your Honor.

Mr. Embry: We except.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, you have already testified that Mr. Claude Sitton is a regular staff correspondent of The New York Times.

A. Yes, sir.

Mr. Nachman: Now, Your Honor, I would like to introduce into evidence as also obtained from the documents produced by the defendant another document—

Mr. Beddow: Your Honor, may I make a statement?

The Court: Yes. Go ahead.

Mr. Beddow: We will make an objection now and if you will let us adopt the objection to each one of the instruments being offered—

The Court: Yes. Why not do it that way. You can have an objection to each document—

Mr. Beddow: All right, Your Honor. We object to these on the grounds that it calls for illegal, irrelevant, incompetent and immaterial testimony and that they don't tend

to prove anything embraced in the Complaint in this case nor to deny anything. Further, we object on the grounds that no proper predicate has been laid for the introduction of those instruments and no proper foundation has been laid for the introduction of those instruments and the instruments, if they are introduced in the manner and the way that they are being offered, would be purely unadulterated hearsay. They have not been properly identified nor has the handwriting been identified nor they haven't been shown to have been abstracted from the records of The Times which were made in the due course of the Times' business either by some individual that made them or by someone who knows that they were, otherwise than by the order of the Court. Now, they are trying to get this witness here to testify to certain things and instead of [fol. 203] going in the front door they are trying to go in the back door. We don't think they are admissible. They call for testimony that is nowise connected with the claims of the plaintiff in this case and they in nowise attempt to show that The Times is doing business in this State and we adopt all these grounds of objection to all of the instruments if Your Honor overrules our objections.

The Court: Well, I will overrule your objections and let these objections apply to each one if you wish.

Mr. Beddow: And then, Your Honor, we may have an exception to each ruling that Your Honor has just made as applied to each document—

The Court: Oh, yes.

Mr. Nachman: Your Honor, may I inquire of counsel whether any of the records produced in this Court in response to the order of this Court which are not records of The New York Times or photostats of the records of the New York Times? We, as counsel for the plaintiff, have assumed that the documents that came in in response to the subpoena are such records or photostats of the records. I don't know whether Mr. Beddow means to indicate that some of them are not but I believe that this would be the time to find out.

Mr. Embry: We are not called upon to testify, if it please the Court and the fact that we have been required to produce them does not make them admissible.

The Court: Well, why not do this. The Clerk of the Circuit Court is present in the Court Room. Come around, Mr. Mathews. Now, you are under oath as an officer of the Court and it will not be necessary to swear you in. Now, Mr. Mathews, this big box here in the Court Room—where did that come from? How did you get it?

Mr. Mathews: It came from—Mr. Beddow's firm brought it down. They brought it down here.

The Court: This big box you are indicating here is the same box that was brought into your office. Is that right?

Mr. Mathews: That's right, Your Honor.

Mr. Embry: Your Honor, may I ask Mr. Mathews [fol. 204] whether he knows—

Mr. Nachman: I have already stated that all of these are in here and if you want to—

The Court: Well, let me make this general ruling for what it is worth. I take it that the fact that these things are produced here in Court is at least prima facie evidence that they are part of the records of the defendant in this case.

Mr. Embry: That may be true, Your Honor, but it proves nothing as to the admissibility—

The Court: Well, yes. I understand that you question the admissibility. I understand that. Go ahead.

Mr. Nachman: Well, Your Honor, I would like to show Your Honor a document identified by the Court Reporter as Plaintiff's Exhibit No. 92 for identification, which counsel for the Plaintiff obtained from the box identified by Mr. Mathews, the Circuit Clerk, which we now show Your Honor—

Mr. Embry: Are you testifying, Mr. Nachman? We object to his statement, Your Honor—

Mr. Nachman: I will be glad to testify if you want me to, that I obtained all these documents from the box there.

The Court: This alleged expense statement looks like it is dated February 4th, 1960.

(Court examines Plaintiff's Exhibit No. 92 for identification.)

The Court: I think it is admissible.

Mr. Embry: We object on the same grounds previously stated, Your Honor, and would like the Record to note our exception.

Mr. Nachman: We offer this in evidence.

(One expense statement of The New York Times for Claude Sitton, dated February 4, 1960, offered and received in evidence and identified as Plaintiff's Exhibit No. 92.)

[fol. 205] Mr. Beddow: We don't want to seem arbitrary, Your Honor, but we don't understand how that tends to prove that The Times was doing business in this State.

The Court: Well, that's going to be a question of law and all of these things put together might or might not build what they are trying to build.

Mr. Beddow: Of course, I understand that when Your Honor rules that testimony is admissible that you are not deciding the case as of now but I just can't—

The Court: No, of course not, but they are trying to build a certain kind of house and this material here might help to build it.

Mr. Beddow: Well, we think it is mighty poor material, Your Honor.

Mr. Nachman: We offer into evidence as our next exhibit, this document identified as Plaintiff's Exhibit No. 93 for identification.

The Court: It looks like this one is dated January 28th, 1960. It is marked Paid, and now, let me read it.

(Court examines Plaintiff's Exhibit No. 93 for identification.)

The Court: I think it is admissible. You may have an exception.

Mr. Embry: We object on the same grounds previously assigned and we note an exception, if the Court please.

(One expense statement, The New York Times, for Claude Sitton, Southern News, dated January 28, 1960, offered and received in evidence and identified as Plaintiff's Exhibit No. 93.)

[fol. 206] Mr. Nachman: We next offer into evidence a document identified as Plaintiff's Exhibit No. 94 for identification from The New York Times, being an expense statement for Mr. Claude Sitton, which was one of the documents obtained by counsel from the box identified by Mr. John Mathews, the Clerk of the Circuit Court.

The Court: This one looks like it says, Paid for the week ending January 6, 1959.

(Court examines Plaintiff's Exhibit No. 94.)

The Court: I think it is admissible insofar as it relates to Tuskeegee, Alabama.

Mr. Embry: We have the same objections previously outlined, Your Honor.

The Court: Yes.

Mr. Embry: And same exception.

(One expense statement, The New York Times, for Claude Sitton, Southern News, dated January 6, 1959, offered and received in evidence and identified as Plaintiff's Exhibit No. 94.)

Mr. Nachman: If the Court please, we next offer this instrument identified as Plaintiff's Exhibit 95 for identification, being a New York Times expense statement for Claude Sitton, dated December 23, 1958. This instrument was also obtained from the box identified by the Circuit Clerk, Mr. Mathews.

(Court examined Plaintiff's Exhibit No. 95.)

The Court: I will let it in insofar as it relates to Montgomery, Tuskeegee and Birmingham and you may have an exception.

Mr. Embry: Same objection; same exception.

[fol. 207] (One expense statement, The New York Times, for Claude Sitton, Southern News, dated December 23, 1958, offered and received in evidence and identified as Plaintiff's Exhibit No. 95.)

Mr. Nachman: We next offer into evidence this instrument identified as Plaintiff's Exhibit No. 96 for identification, being a New York Times expense statement for Claude

F. Sitton, dated July, 1958, and obtained from the box previously identified by Mr. John Mathews, the Circuit Clerk.

(Court examined Plaintiff's Exhibit No. 96 for identification.)

The Court: I will let it in insofar as it pertains to Huntsville, Alabama.

Mr. Embry: We except, if the Court please.

(One expense statement, The New York Times, for Claude F. Sitton, Southern News, dated July, 1958, offered and received in evidence and identified as Plaintiff's Exhibit No. 96.)

Mr. Nachman: If the Court please, we offer in evidence this instrument identified as Plaintiff's Exhibit No. 97 for identification, being a New York Times expense statement for Claude F. Sitton, Southern News, dated June 12, 1958, obtained by counsel from the box previously identified by Mr. John Matthews, Circuit Clerk.

(Court examines Plaintiff's Exhibit No. 97 for identification.)

[fol. 208] The Court: I will let it in as to Birmingham, Alabama.

(Expense statement, The New York Times, for Claude F. Sitton, Southern News, dated June 12, 1958, offered and received in evidence and identified as Plaintiff's Exhibit No. 97.)

Mr. Nachman: We next offer into evidence Plaintiff's Exhibit No. 98 for identification, being The New York Times expense statement of Claude F. Sitton, dated 1958, which we obtained from the box previously identified by Mr. Mathews.

(Court examines Plaintiff's Exhibit No. 98 for identification.)

The Court: I will let it in as to the Huntsville, Alabama trips.

(Expense statement, The New York Times, for Claude F. Sitton, Southern News, dated 1958, offered and received in evidence and identified as Plaintiff's Exhibit No. 98.)

Cross examination. (Continued)

By Mr. M. R. Nachman, Jr.:

Q. Mr. Faber, are you familiar with John N. Popham? Do you know who he is?

A. Yes, sir.

Q. In 1957 and 1956, what position, if any, did he hold with The New York Times?

Mr. Embry: We object to that question, if the Court please. It calls for a period of time which is incompetent, [fol. 209] irrelevant and immaterial.

The Court: I will let it in and give you an exception.

Mr. Embry: We except.

The Witness: He was the Southern correspondent for The New York Times.

Mr. Nachman: With such identification as to who John N. Popham was, we offer in evidence next Plaintiff's Exhibit No. 99 for identification, being a New York Times expense statement for John N. Popham, dated 1957 and obtained from the box identified by Mr. Mathews, the Circuit Clerk.

(Court examined Plaintiff's Exhibit No. 99, for identification.)

The Court: I will let it in as to September 19th, the dates pertaining to Huntsville.

(Expense statement, The New York Times, for John N. Popham, Southern News, dated 1957, offered and received in evidence and identified as Plaintiff's Exhibit No. 99.)

Mr. Nachman: We offer into evidence as our next exhibit Plaintiff's Exhibit No. 100 for identification, being a New York Times expense account for John N. Popham, dated 1957, which counsel obtained from the box identified by Mr. John Mathews.

Mr. Embry: We object to that on the grounds that it calls for information pertaining to a period of time not relevant to the inquiry before the Court.

(Court examines Plaintiff's Exhibit No. 100 for identification.)

The Court: I will let it in insofar as it pertains to Florence, Alabama.

[fol. 210] Mr. Embry: We except, if the Court please. Your Honor, I assume we still have the same objections as we stated about the Sitton documents.

The Court: Yes.

(Expense statement, The New York Times for John N. Popham, Southern News, dated 1957, offered and received in evidence and identified as Plaintiff's Exhibit No. 100.)

Mr. Nachman: We offer into evidence as Plaintiff's Exhibit No. 101 for identification, the New York Times expense statement for John N. Popham, dated April 11, 1957, which was obtained by counsel from the box identified by Mr. Mathews.

(Court examines Plaintiff's Exhibit No. 101 for identification.)

The Court: Well, I will let it in as to Gadsden and Tuskeegee, Alabama. I make the same ruling and you have the same exception.

(Expense statement, The New York Times, for John N. Popham, Southern News, dated April 7, 1957, offered and received in evidence and identified as Plaintiff's Exhibit No. 101.)

Mr. Nachman: We offer into evidence as Plaintiff's Exhibit No. 102 for identification, The New York Times expense statement for John N. Popham, dated March 3rd, 1957, which was obtained by counsel from the box previously identified by Mr. Mathews.

[fol. 211] (Court examines Plaintiff's Exhibit No. 102 for identification.)

The Court: I will let it in as to the trip to Birmingham, Alabama.

Mr. Embry: Same exception.

(Expense statement, The New York Times for John N. Popham, Southern News, dated March 3, 1957, offered and received in evidence and identified as Plaintiff's Exhibit No. 102.)

Mr. Nachman: We offer into evidence as Plaintiff's Exhibit No. 103 for identification the New York Times expense statement for John N. Popham, dated May 16, 1956, which was obtained from the box previously identified by Mr. Mathews.

Mr. Embry: We wish to state an additional ground for objection, Your Honor, with respect to the period of time being too remote to be relevant and it is immaterial on the inquiry before the Court.

(Court examines Plaintiff's Exhibit No. 103 for identification.)

The Court: I will let it in as to Birmingham and Montgomery, Alabama.

Mr. Embry: We except.

(Expense statement, The New York Times for John N. Popham, Southern News, dated May 16, 1956, offered and received in evidence and identified as Plaintiff's Exhibit No. 103.)

[fol. 212] Cross examination. (Continued)

By Mr. M. R. Nachman, Jr.:

Q. Mr. Faber, do you know Wayne Phillips?

A. Yes, sir.

Q. During the period of February 7th to February 11th, 1956 and February 12th and February 18th, 1956 and February 19th to February 25th, 1956 and February 26th to March 3rd, 1956 and March 4th, through March 10th, 1956 and March 4th, through March 10th, 1956 and March 11th through March 17th, 1956 and March 18th through March 24th, 1956, what, if any, was the relationship between Wayne Phillips and The New York Times Company, the defendant in this case?

A. Wayne Phillips was the reporter for the City staff of The New York Times.

Q. Was he a regular employee of The Times?
A. Yes, sir.

Mr. Nachman: All right, sir. With that identification of Mr. Phillips we offer into evidence as Plaintiff's Exhibit No. 104 for identification the New York Times expense statement for Wayne Phillips, dated February 11th, 1956, which counsel obtained from the box identified by Mr. Mathews.

(Court examines Plaintiff's Exhibit No. 104 for identification.)

Mr. Embry: We object to it on the same grounds previously assigned, Your Honor.

The Court: I will let it in as to Tuskeegee, Birmingham and Montgomery. Let me correct that. I will let it in as to Tuscaloosa, Birmingham and Montgomery.

Mr. Embry: We except, if the Court please.

(Expense statement, The New York Times for Wayne Phillips, dated February 11th, 1956, offered and received in evidence and identified as Plaintiff's Exhibit No. 104.)

[fol. 213] Mr. Nachman: If the Court please, we offer into evidence as Plaintiff's Exhibit No. 105 for identification the New York Times expense statement for Wayne Phillips for the week ending February 18th, 1956 obtained by counsel from the box identified by Mr. Mathews.

(Court examines Plaintiff's Exhibit No. 105 for identification.)

The Court: I will let it in as to the only trip on here, the Tuscaloosa trip.

Mr. Embry: We except.

(Expense statement, The New York Times for Wayne Phillips, dated February 18th, 1956, offered and received in evidence and identified as Plaintiff's Exhibit No. 105.)

Mr. Nachman: We offer into evidence as Plaintiff's Exhibit No. 106 for identification The New York Times expense statement for Wayne Phillips for week ending February 25th, 1956, which was obtained by counsel from the box identified by Mr. Mathews.

(Court examines Plaintiff's Exhibit No. 106 for identification.)

The Court: I think it is admissible as to Tuscaloosa, Birmingham and Montgomery.

Mr. Embry: We except, Your Honor.

[fol. 214] (Expense statement, The New York Times for Wayne Phillips, dated February 25, 1956, offered and received in evidence and identified as Plaintiff's Exhibit No. 106.)

Mr. Nachman: We offer into evidence as Plaintiff's Exhibit No. 107 for identification, the New York Times expense statement for Wayne Phillips for the week ending March 3rd, 1956, which was obtained by counsel from the box identified by Mr. Mathews.

(Court examines Plaintiff's Exhibit No. 107 for identification.)

The Court: I think it is good as to Montgomery and Birmingham.

Mr. Embry: We except.

(Expense statement, The New York Times for Wayne Phillips, dated March 3, 1956, offered and received in evidence and identified as Plaintiff's Exhibit No. 107.)

Mr. Nachman: We offer into evidence as Plaintiff's Exhibit No. 108 for identification, The New York Times expense statement for Wayne Phillips for the week ending March 10th, 1956, which was obtained by counsel from the box identified by Mr. Mathews.

(The Court examines Plaintiff's Exhibit No. 108 for identification.)

The Court: I will let it in as to all Alabama towns.

Mr. Embry: We except, if the Court please.

[fol. 215] (Expense statement, The New York Times for Wayne Phillips, dated March 10, 1956, offered and received in evidence and identified as Plaintiff's Exhibit No. 108.)

Mr. Nachman: We offer into evidence Plaintiff's Exhibit No. 109 for identification, being the New York Times

expense statement for Wayne Phillips for the week ending March 17th, 1956, obtained by counsel from the box identified by Mr. Mathews.

(Court examines Plaintiff's Exhibit No. 109 for identification.)

The Court: I will let it in as to Birmingham, Tuscaloosa, Montgomery and Selma.

Mr. Embry: We except, if the Court please.

(Expense statement, The New York Times for Wayne Phillips, dated March 17, 1956, offered and received in evidence and identified as Plaintiff's Exhibit No. 109.)

Mr. Nachman: We offer into evidence as Plaintiff's Exhibit No. 110 for identification, The New York Times expense statement for Wayne Phillips for the week ending March 24th, 1956, obtained by counsel from the box identified by Mr. Mathews.

(Court examines Plaintiff's Exhibit No. 110 for identification.)

The Court: I will let it in as to Montgomery.

Mr. Embry: Same exception.

[fol. 216] (Expense statement, The New York Times for Wayne Phillips, dated March 24, 1956, offered and received in evidence and identified as Plaintiff's Exhibit No. 110.)

Cross examination. (Continued)

By Mr. M. B. Nachman, Jr.:

Q. Mr. Faber, do you know a Frank M. Monger?

A. No, sir.

Q. Do you know a Thomas M. Hurley?

A. No, sir.

Q. Do you know a George Barrett?

A. Yes, sir.

Q. During the years 1956 and 1957 was Mr. George Barrett employed by The New York Times Company, the defendant in this case?

A. Yes, sir.

Q. He was a regular employee?
A. Yes, sir.
Q. What were his duties?
A. He was a reporter—

Mr. Embry: We object to the question because of the period of time being inquired about being 1956 and 1957, Your Honor.

The Court: I will let it in and give you an exception.

Mr. Embry: We except.

Mr. Nachman: With that identification of Mr. George Barrett by this witness, we offer into evidence as Plaintiff's Exhibit No. 111 for identification The New York Times expense statement for George Barrett for the period of September 16th through October 8th, 1957 and this document was obtained from the box previously identified by Mr. Mathews.

[(fol. 217] (Court examines Plaintiff's Exhibit No. 111 for identification.)

The Court: I think it would be admissible as to Huntsville, Alabama.

Mr. Embry: We except, if the Court please.

(Expense statement, The New York Times for George Barrett, dated September 16,-October 8, offered and received in evidence and identified as Plaintiff's Exhibit No. 111.)

Mr. Nachman: We offer into evidence Plaintiff's Exhibit No. 112 for identification, being a New York Times expense statement of George Barrett, dated March 7th, 1957, which was obtained from the box by counsel which was previously identified by Mr. John Mathews.

(Court examines Plaintiff's Exhibit No. 112 for identification.)

The Court: I will let it in as to Montgomery.

Mr. Embry: We except.

(Expense statement, The New York Times for George Barrett, dated March 7, 1957, offered and received in evidence and identified as Plaintiff's Exhibit No. 112.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, do you have anything to do with the okaying of items or approving of items on these sheets?
[fol. 218] A. No, sir.

Mr. Nachman: We offer into evidence this instrument identified as Plaintiff's Exhibit No. 113 for identification, being expense statement of The New York Times for George Barrett, dated December 20th, December 24th, 1956, which was obtained by counsel from the box previously identified by Mr. Mathews.

Mr. Embry: We have the same objection, with the additional grounds that it is too remote as to the period of time and not probative to the issues presented to Your Honor on the Motion to Quash.

(Court examines Plaintiff's Exhibit No. 113 for identification.)

The Court: I will let it in as it pertains to Montgomery.
Mr. Embry: We except, if the Court please.

(Expense statement, The New York Times for George Barrett, dated December 20th through December 24th, 1956, offered and received in evidence and identified as Plaintiff's Exhibit No. 113.)

Mr. Nachman: We offer into evidence as Plaintiff's Exhibit No. 114 for identification, The New York Times expense statement from George Barrett, dated December 10th, 1956, obtained by counsel from the box previously identified by Mr. John Mathews.

(Court examines Plaintiff's Exhibit No. 114 for identification.)

The Court: I will let it in as to Montgomery.
Mr. Embry: We except.

[fol. 219] (Expense statement, The New York Times for George Barrett, dated December 10, 1956, offered and received in evidence and identified as Plaintiff's Exhibit No. 114.)

Cross examination. (Continued)

By Mr. M. R. Nachman, Jr.:

Q. Mr. Faber, do you know a Peter Frederick Kihss?
A. Yes, sir.
Q. During the period January 19th through February 4th, 1956, was Mr. Kihss a regular employee of The New York Times Company, the defendant in this case?
A. Yes, sir.

Mr. Nachman: With that identification of Mr. Kihss, Your Honor, we offer into evidence as Plaintiff's Exhibit No. 115 for identification the New York Times expense statement for Peter Frederick Kihss, dated March 2nd, 1956, which was obtained by counsel from the box identified previously by Mr. Mathews.

Mr. Embry: We object to that on the same grounds previously assigned but assign the additional ground that the year is too remote and it is incompetent, irrelevant and immaterial.

(Court examines Plaintiff's Exhibit No. 115 for identification.)

The Court: I will let it in as to Mobile, Montgomery, Birmingham, Selma and Tuskeegee.

Mr. Embry: We except.

(Expense statement, The New York Times for Peter Frederick Kihss, dated March 2, 1956, offered and received in evidence and identified as Plaintiff's Exhibit No. 115.)

[fol. 220] Cross examination. (Continued)

By Mr. M. R. Nachman, Jr.:

Q. Mr. Faber, do you know a Clarence Dean?
A. Yes, sir.
Q. During the period from December 26th, 1956 through January 3rd, 1957, was Mr. Dean a regular employee of The New York Times?
A. Yes, sir.

Q. In what capacity?

A. A reporter for The Times.

Mr. Nachman: With that identification of Mr. Dean, Your Honor, we offer into evidence a document identified as Plaintiff's Exhibit No. 116 for identification, a New York Times expense statement for Clarence Dean for the week ending January 10th, 1957. This document was obtained from the box identified by Mr. Mathews.

(Court examines Plaintiff's Exhibit No. 116 for identification.)

The Court: I think it is admissible as to Birmingham and Montgomery.

Mr. Embry: We except.

(Expense statement, The New York Times for Clarence Dean, dated January 10, 1957, offered and received in evidence and identified as Plaintiff's Exhibit No. 116.)

Cross examination. (Continued)

By Mr. M. R. Nachman, Jr.:

Q. Mr. Faber, do you know a man by name of H. E. Salisbury?

[fol. 221] A. Yes, sir.

Q. Is that the same Harrison Salisbury about whom you testified about in this proceeding earlier today?

A. Did I testify something about him?

Q. Wasn't there some questions about whether or not Mr. Salisbury had been in Birmingham and assigned to the—

A. Yes. He had been. That's right.

Q. That's the same man, is it not?

A. Yes, sir.

Q. Was Mr. Salisbury a regular employee of The New York Times Company, the defendant in this case, during the month of April of this year, 1960?

A. Yes, sir.

Mr. Nachman: With that identification of Mr. Salisbury, if the Court please, I offer this document in evidence which

has been identified as Plaintiff's Exhibit No. 117 for identification, being a New York Times expense statement for H. E. Salisbury for the week ending April 13th, 1960, and this document was obtained from the box already identified by Mr. Mathews.

(Court examines Plaintiff's Exhibit No. 117 for identification.)

The Court: I will let it in as to Montgomery.

Mr. Nachman: I also believe, Your Honor, that it shows Andalusia—

The Court: Andalusia. That's right.

Mr. Nachman: And Birmingham, Your Honor.

The Court: Birmingham too. All right.

Mr. Embry: We except.

(Expense statement, The New York Times for H. E. Salisbury, dated April 13, 1960, offered and received in evidence and identified as Plaintiff's Exhibit No. 117.)

[fol. 222] Cross examination. (Continued)

By Mr. M. B. Nachman, Jr.:

Q. Mr. Faber, referring to the exhibits, the expense statements which have just been introduced into evidence, would all of those gentlemen, namely, Claude Sitton, John Popham, Wayne Phillips, George Barrett, Peter Kihss, Clarence Dean and H. E. Salisbury, come into Alabama during the period shown thereon under assignment to gather news and to submit stories to The New York Times?

A. Yes, sir.

Q. I take it that you have nothing to do with the advertising end of The New York Times. Is that correct, sir?

A. No, sir. I do not.

The Court: What is your circulation? It is about ten million all over the nation?

The Witness: About seven hundred fifty thousand.

The Court: I mean all over the United States.

The Witness: Oh, one million three hundred thousand on Sundays or something like that.

Mr. Nachman: Your Honor, we have now taken from the box which Mr. Mathews identified, staff stories as they appeared in The New York Times and once again, we make an offer to introduce these in bulk for later identification by the Court Reporter in order to save time but if counsel prefers an item by item submission then we will, of course, abide by opposing counsel's wishes in that regard.

Mr. Embry: Your Honor, no news story could possibly be admitted into evidence—if he claims they were written by the man—if this man testifies that he wrote a news story, it may or may not be of some evidential value, but the news stories or the contents of the news stories certainly couldn't have any relevancy to the issues now before this Court.

The Court: Well, news stories relating to conditions [fol. 223] around here in Montgomery and places like that I think would be admissible.

Mr. Embry: We except, Your Honor.

Mr. Nachman: Is it agreeable, Mr. Embry, that we can go ahead and introduce these in bulk or do you want us to do it one by one?

Mr. Embry: You may have to do it one by one because I don't know what is in there as I haven't looked at it.

The Court: Well, the Court will take a recess for ten minutes so that counsel can get together and look through those documents and see what may be agreed upon. Court is recessed for ten minutes.

(Ten minute recess.)

Mr. Embry: Your Honor, we have examined the copies of the photostats of the group of exhibits which Mr. Nachman has announced his intention of offering into evidence and we would like to make our position known to the Court in respect to them in general before we go into them article by article. Those purport to be and are in fact photostat copies of back pages out of the newspaper with particular times and dates, beginning back in 1956 and through July, 1960.

The Court: When was the suit filed? In April?

Mr. Embry: In April. Yes, Your Honor, yes. Now, Your Honor, those were produced in response to an order of the Court which asks that all news stories relating to

Alabama be produced. That was the substance of the Motion to produce. Now, many of the stories themselves don't even purport to have been written in Alabama. None of them show where they were written. Some of them contain date lines and there may be some testimony from this witness indicating what that infers from the fact that the date line or slug, as Mr. Nachman called it, appears on it, but if the theory upon which the Plaintiff is offering these into evidence or is about to offer them into evidence [fol. 224] either one or all of these sheets of newspaper which contained stories which in any wise relates to Alabama—if his theory in offering those is to offer evidence which would seek to perhaps have some probative value on the question of whether an employee of the defendant, The New York Times Company, was in Alabama—if he is doing anything or carrying on any activities which might shed some light on whether the corporation is doing business in Alabama—then, if that is their theory, then, of course it is merely accumulative of the testimony because Mr. Faber has already testified about staff assignments in relation to —and it is also accumulative of the documentary evidence which Your Honor has admitted in reference to these expense accounts and we, of course, again say with respect to Your Honor that it again goes back to a period of time prior to the first day of January, 1960 and it is not relevant on that ground. We also contend, Your Honor, that it goes far beyond the proper scope of the proper cross examination of this witness because he has testified in connection with his duties in reference to staff assignments, and certainly the contents of the news stories, many of which show on their face that they were from the wire services of the Associated Press and the United Press—the contents, of course, would have no relevancy with respect to the activity of the employees or agents of The New York Times Corporation in Alabama during the entire period or even during the period that we contend is relevant to the inquiry before the Court. For those reasons, if it please the Court, we will request that we be permitted to proceed by the process of the plaintiff offering those documents individually if they see fit to do so and as they are offered we would like the privilege of offering our objections at the time be-

cause they are not all the same and it would be improper for us to object to them in bulk, and we want our objections to appear to each one individually in the Record.

Mr. Nachman: Is there any necessity for me to reply to that statement, Your Honor?

The Court: Well, are there any objections to offering them one by one?

[fol. 225] Mr. Nachman: No, Your Honor, but I believe that there are eighty-nine of these items. I believe that Mr. Embry is incorrect in stating that they contain any wire-service stories. I believe that all of the documents which we now propose to offer into evidence are written under the by-line of specific authors, most of whom have been identified already as regular staff correspondents of The New York Times. Almost all of them bear Alabama date-lines and all of them relate to events in Alabama, among other events, but we will be happy to proceed to offer them into evidence one by one if that's the way they want to do it.

Mr. Loeb: Your Honor, on the general subject of their relevancy, let me say that I have looked at them also and let me point out to the Court for example that one of them is a piece by Mr. Claude Sitton written in Los Angeles during the Democratic Convention in Los Angeles. Now, how that can be any evidence whatsoever as to the Times doing business in the State of Alabama, leaves me really slightly confused. In addition to that, Your Honor, I don't see for the life of me how the fact that The New York Times carries news items originating in Alabama makes The New York Times doing business in the State of Alabama any more than we are doing business in the Belgian Congo today because we have a correspondent out there reporting the details of what is going on in that disturbed country, or in Cuba, or in Russia.

Mr. Nachman: Your Honor, with all respect to Mr. Loeb I must say that apparently they did not very carefully examine the documents which we now propose to offer into evidence. The Los Angeles story just referred to is not among them. What they examined apparently was a list which we prepared of the headings which we gave them for their convenience. The Los Angeles story is right here and

I propose to offer that into evidence at another time and it is not even included among the documents which I propose to introduce into evidence at this time.

The Court: Well, go ahead and introduce them one by one and we will save time in the long run.

[fol. 226] Mr. MacLeod: The list you gave us, Mr. Baker told us, was the list you proposed to—

Mr. Nachman: Well, what I had—

Mr. MacLeod: Was there any other thing misleading about it—

Mr. Nachman: There was nothing misleading at all, Mr. MacLeod—

Mr. Baker: I thought we were going to address our remarks to the Court, Your Honor.

The Court: Yes. That would be best. Address all remarks to the Court and let the Court rule on them.

Mr. Beddow: We want to see each one of them because we are serious about this business and we are going to insist on handling it according to Hoyle.

Mr. Nachman: Well, you will have an opportunity to examine each one of them, Mr. Beddow, and I haven't attempted to keep you from doing so. I am not going to start now—

Mr. Beddow: Well, I am just talking about the procedure we should adopt. I am not complaining about what you have done in the past.

The Court: Proceed, gentlemen.

Mr. Nachman: If the Court please, we offer into evidence as Plaintiff's Exhibit No. 118, page 22 of the Tuesday, February 28th issue of The New York Times which contains the story "Business Suffers by Racial Dispute. Montgomery merchants who deal with Negroes and whites are hard hit." It is by Wayne Phillips, "Special to The New York Times" Montgomery, Alabama, February 27, 1956.

Mr. Embry: We object to that, Your Honor. It hasn't been identified—

Mr. Nachman: Well, I haven't finished. This was obtained from the box previously identified by Mr. John Mathews, the Clerk of the Circuit Court. In order to keep [fol. 227] from making that statement every single time I offer a document I will say to the Court now that every

one of these documents I now propose to offer into evidence was obtained from that same box identified by Mr. Mathews.

The Court: Let me see the article.

(Court examines Plaintiff's Exhibit No. 118 for identification.)

Mr. Embry: We object to that, Your Honor, on the grounds that it is accumulative of the documentary evidence and of those exhibits of those last numbers which included the expense accounts of Wayne Phillips. We object on the further ground that it relates to a time, to-wit, Tuesday, February 28th, 1956 and bearing the story referred to bearing the dateline of February 27th, which period of time is too remote as offering any evidence which will shed any light on the question of The New York Times doing business or not doing business in the State of Alabama at the time service of process was attempted to be had in April, 1960. The article itself contains news stories bearing the by-line of Wayne Phillips and contains no evidence legal or pertinent or material to the question of whether The New York Times is subject to the jurisdiction of the Court or whether it was doing business in The State of Alabama at or near the time that service was attempted to have been obtained upon the Times in April of 1960. We object further on the grounds that the article itself and the exhibit is incompetent, irrelevant and immaterial and has no probative value by which it would prove or disprove the issues before the Court on the Motion to Quash or the question of the jurisdiction of this Court over The New York Times Company, a foreign corporation, at the time in question which is the time of the service of process upon it or attempted service of process in April, 1960.

The Court: I think it is admissible and you may have an exception to the Court's ruling.

Mr. Embry: We wish to object on the further ground, Your Honor, that it unduly encumbers the record without being material—

The Court: I will let it in.

[fol. 228] Mr. Embry: We except.

(Newspaper Article, The New York Times, Tuesday, February 28, 1956, at Page 22, entitled, "Business Suffers by Racial Dispute" by Wayne Phillips, datelined, Montgomery, Alabama, February 28, offered and received in evidence and identified as Plaintiff's Exhibit No. 118.)

Cross examination. (Continued)

By Mr. M. R. Nachman, Jr.:

Q. Now, Mr. Faber, I show you Plaintiff's Exhibit No. 18 and I call your attention to a news story by Wayne Phillips in the extreme left hand column of that page. Have you looked at it?

A. Yes, sir.

Q. What does the dateline, Montgomery, Alabama, February 27th mean?

A. It means that there was some news event occurring in Montgomery, Alabama on February 27th and that Mr. Phillips was in Montgomery on that day.

Q. Covering that news event.

A. Covering that news event, yes.

Q. And he sent his coverage in to The New York Times in the form of that news story, didn't he?

A. He sent this story to The New York Times, certainly.

Q. And it indicates that he was covering the event in Montgomery, Alabama, does it not?

A. Yes, sir.

Q. On that day.

A. Yes, sir.

Mr. Embry: Now, Your Honor, we move that it be excluded because of the answer of the witness demonstrates the correctness of my objection that it is merely accumula- [fol. 229] tive of the other evidence that has been introduced here and was introduced for the same purpose of showing that he was here on that day.

The Court: I overrule the motion and give you an exception.

Mr. Embry: We except, if the Court please.

Mr. Nachman: If the Court please, we offer into evidence as Plaintiff's Exhibit No. 119, page 17 of the Monday, February 27th, 1956 issue of The New York Times, which

contains a story by Wayne Phillips, Special to the New York Times, under dateline of Montgomery, Alabama, February 26th, entitled, "Negro Pastors Press Bus Boycott by Preaching Passive Resistance. Integration is Great Issue of Our Age, Leader of Montgomery Fight Asserts—Sees Victory as One of Democracy."

Mr. Embry: Your Honor, we would like to object to the introduction of this exhibit as identified by Mr. Nachman. If Your Honor will permit us to do so, we would like to have the Court Reporter just as though I had spoken the words, put my previous objections assigned into this objection to this exhibit and each of the succeeding exhibits—

The Court: Well, there would be no objection to that, would there?

Mr. Nachman: No, Your Honor. We have already stipulated that they may assign any objection now, later or any other time that they can think of. We will be happy to agree to that.

Mr. Baker: We will stipulate that if he is going to live up to it but it doesn't do any good to stipulate it and have him—

Mr. Embry: Well, I may have other grounds and I will assign them as they occur to me, Mr. Baker.

Mr. Nachman: Any objections you wish to assign now, you may do so or assign at any other time, Mr. Embry.

Mr. Embry: Now, Your Honor, we want it understood that if we assign any additional grounds that they are in addition to the grounds that we have already previously assigned.

The Court: Yes. That is understood.

Mr. Nachman: We offer this then in evidence as Plain-
[fol. 230] tiff's Exhibit No. 119.

Mr. Embry: I assume, Your Honor, that our exception will go with the assignment of grounds of objection—

The Court: Well, yes. You have an exception.

(Newspaper article from The New York Times, Monday, February 27, 1956 at page 17, entitled, "Negro Pastors Press Bus Boycott by Preaching Passive Resistance", by Wayne Phillips, datelined, Montgomery, Alabama, February 26, offered and received in evidence and identified as Plaintiff's Exhibit No. 119.)

Cross examination. (Continued)

By Mr. M. R. Nachman, Jr.:

Q. Mr. Faber, referring to Plaintiff's Exhibit No. 119, I call your attention to the column that I referred to a moment ago and ask you if that indicates the same thing you have just testified to about Plaintiff's Exhibit No. 118, namely, that the byline of Wayne Phillips, Special to the New York Times, with the Montgomery, Alabama dateline indicates that that was a news story that Mr. Phillips wrote while he was here or relating to events he covered while he was here?

A. That indicated that he was here and that he covered the events in Montgomery, Alabama on that day.

Mr. Nachman: If the Court please, the next exhibit contains three pages but it is all pertaining to one article and we would like it identified as one article assigned one number for identification. It is a four page exhibit rather than three pages.

Cross examination. (Continued)

By Mr. M. R. Nachman, Jr.:

Q. Now, Mr. Faber, I call your attention to this group of four sheets of documents identified as Plaintiff's Exhibit No. 120 for identification and I will ask you whether [fol. 231] or not this is a story that appeared in The New York Times magazine or supplement appearing in the issue of February 26, 1956?

A. Yes, sir.

Q. Does it indicate that it was written by Wayne Phillips with a Tuscaloosa, Alabama dateline?

A. Yes, sir.

Q. Would that indicate that Mr. Phillips wrote this story from Tuscaloosa?

A. Not necessarily.

Q. Would it indicate that he wrote the story based on news gathering that he engaged in while in Tuscaloosa, Alabama?

A. Yes, sir.

Q. Now, Mr. Faber, you will notice certain photographs on these pages. Is there anything to indicate how those photographs reached The New York Times and who took them?

A. No.

Q. Do you happen to know how they did in connection with this story?

A. No, I do not.

Mr. Nachman: If the Court please, we would like to introduce these four sheets into evidence as our next exhibit. This is exhibit No. 120.

(Court examines Plaintiff's Exhibit No. 120 for identification.)

The Court: Well, I will let it in subject to all legal objections.

Mr. Embry: Your Honor, we want to add the ground that the photographs—there is nothing made to appear that the correspondent had anything to do with the photographs. There is nothing to indicate that the correspondent caused them to be made.

The Court: Same ruling.

Mr. Embry: We except.

[fol. 232] (Newspaper Magazine article, The New York Times Magazine, dated February 26, 1956, entitled "Tuscaloosa: A Tense Drama Unfolds" and photographs contained therein, by Wayne Phillips, datelined Tuscaloosa, Alabama, offered and received in evidence and identified as Plaintiff's Exhibit No. 120.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. In terms of that objection, Mr. Faber, would you read the captions under the photographs and after reading them would you state whether they concern event portrayed in this article?

A. The first one says, "Storm Center—Campus of the University of Alabama is about one and one-half miles from the center of Tuscaloosa. The Union (above) is a students' center." The second caption says, "Tuscaloosa Town—This is a downtown scene in the Alabama City of

56,000 that has become the focal point of the bitter fight over integration. Once it had a good record on race relations, partly because of the influence of the University of Alabama, but with the attempt of a Negro student to enter the University, violence, fear, hatred have taken over." The third picture is captioned as follows: "Tuscaloosa Gown—University students leave the special convocation where President Oliver C. Carmichael pleaded for order after the outbreaks that threatened Negro student Autherine J. Lucy and forced her suspension from the University. Some students agreed. But others, who had joined the mob, defiantly vowed to continue the fight against integration." The next caption says, "Rally point—a monument to the Indian Chief for whom the town was named marks the Tuscaloosa County Court House. It was here that the White Citizens' Council was formed, of both University students and townspeople, to defend Southern segregation." The next picture says, "Normalcy—despite formal segregation, in schools and elsewhere, Tuscaloosa has long [fol. 233] seen Negro and white residents working side by side in peace. This is a television repair crew. But the town's quiet revolution in race relations has now come to a stand still." The next picture says, "Other Campus—across town from the University is Stillman College, for Negroes where white Alabama faculty members have furthered tolerance by teaching part-time. This is John S. Pancake, Assistant Professor of History at Alabama, with two Stillman students." The next picture says, "Separate but Equal—that classic doctrine, now rejected by the Supreme Court's school decision, accurately describes Tuscaloosa's secondary school system. This is the newly opened Druid High School, built at a cost of nearly two million dollars for 1,342 Negro students."

Mr. Loeb: Your Honor, on those pictures that have been introduced into evidence, there is no proof whatsoever that they were taken by members of The New York Times.

Mr. Nachman: Well, they were published by The New York Times in connection with this story.

Mr. Loeb: Well, that may be, but that doesn't prove that The New York Times took the pictures. They may have

bought them from The Montgomery Advertiser for that matter.

Mr. Nachman: Nobody is claiming that The New York Times took the pictures.

Mr. Loeb: How does the fact that The New York Times in New York published pictures along with a story, which was obviously written by The Times, how does the fact that The Times published those pictures prove that they were doing business here by using pictures—

Mr. Nachman: Well, they have been identified as being in the same article accompanying the news stories—

The Court: Well, I will let them in for whatever evidential value they may have and you may, of course, have an exception.

Mr. Embry: We except, Your Honor.

Cross examination. (Continued)

By Mr. M. R. Nachman, Jr.:

Q. Mr. Faber, I call your attention to a document iden- [fol. 234] tified as Plaintiff's Exhibit No. 121 for identification which is page 50 of the February 26th, 1956 edition of the New York Times and I call your attention to an article entitled, "Parents disown Miss Lucy's Fight and they say they taught their children to stay their distance from white folks," the following dispatch was written for the Associated Press by Arthur Capell in the Selma, Alabama Times Journal and it is under the dateline of Selma, Alabama, February 25th.

Mr. Embry: Your Honor, that calls for a special objection. That article doesn't even purport to have been written by a New York Times reporter.

The Court: Let me see the article.

Mr. Nachman: Well, I want to ask a few questions about it. It hasn't been admitted into evidence yet. It has just been marked for identification.

The Court: This says it was written by the Associated Press. There is no testimony here that Capell is a New York Times man, is there?

Mr. Embry: No, sir.

Mr. Nachman: I was going to ask some identifying questions of Mr. Faber when the objection was made.

The Court: Is this Capell one of your reporters?

The Witness: No, sir.

The Court: Well, I have my doubts about this one here. Let me exclude it and give you an exception to the Court's ruling.

Cross examination. (Continued)

By Mr. M. R. Nachman, Jr.:

Q. Now, Mr. Faber, I show you another document which has been identified as Plaintiff's Exhibit No. 121 on page 1 of The New York Times, Saturday, February 25th, 1956 and I call your attention to a news story on the extreme left hand column and it is entitled "Folsom Proposes Bi-Racial Group to Fight Tension," with a byline by Wayne Phillips, Special to The New York Times, with a dateline of Montgomery, Alabama, February 24th. Your testimony, I take [fol. 235] it, would be the same as it has been with regard to Mr. Phillips identification with Alabama in connection with that story and as to the date line and byline as you have indicated prior hereto. Is that correct, sir?

A. That's correct. Yes, sir.

Mr. Nachman: We offer this in evidence, if the Court please.

Mr. Embry: What was your answer?

The Witness: The same as before, identification of Phillips.

Mr. Nachman: Your Honor, inadvertently I left out the second page of this story which is on page 10 of the same issue of The New York Times and it is to be marked and identified as the same exhibit, Plaintiff's Exhibit No. 121.

The Court: All right. Let it in with the same objections and same exceptions.

(Newspaper article, The New York Times, Saturday, February 25, 1956, entitled "Folsom Proposes Bi-Racial Group to Fight Tension," by Wayne Phillips, Special to The New York Times, datelined Montgomery, Alabama, February 24, offered and received in evidence and identified as Plaintiff's Exhibit No. 121.)

Cross examination. (Continued)

By Mr. M. R. Nachman, Jr.:

Q. I show you, Mr. Faber, two pages, page 1 and page 8 of the February 24th, 1956 issue of The New York Times and I call your attention to the story in the lower right hand corner entitled, "Negroes Pledge to Keep Boycott," by Wayne Phillips, Special to The New York Times, datelined Montgomery, Alabama, February 23rd. Is your testimony once again the same as regard to what those entries show?

A. Yes, sir.

[fol. 236] Mr. Nachman: We offer this in evidence to be identified as our next exhibit, if the Court please.

The Court: I will let it in and give you an exception.

Mr. Embry: We except.

(Newspaper article, The New York Times, Friday, February 24, 1956 entitled, "Negroes Pledge to Keep Boycott," by Wayne Phillips, Special to The New York Times, datelined Montgomery, Alabama, February 23, 1956 offered and received in evidence and identified as Plaintiff's Exhibit No. 122.)

Cross examination. (Continued)

By Mr. M. R. Nachman, Jr.:

Q. Mr. Faber, I show you another document which has been identified as Plaintiff's Exhibit No. 123 for identification which is page 23 of The New York Times newspaper, Thursday, February 23rd, 1956 and I call your attention to a story in the extreme left hand column and it is entitled "Dean is Critical of Miss Lucy's Bid," by Wayne Phillips, Special to The New York Times, datelined Tuscaloosa, Alabama, February 21st. Is your testimony the same as previously stated as to the testimony given with regard to what those entries indicate?

A. Yes, sir.

Mr. Nachman: We offer this in evidence as our next exhibit, Your Honor.

The Court: I will let it in subject to all legal objections.

Mr. Embry: We except.

[fol. 237] (Newspaper article, The New York Times, Thursday, February 23, 1956, entitled, "Dean is Critical of Miss Lucy's Bid", by Wayne Phillips, Special to The New York Times, datelined Tuscaloosa, Alabama, February 21, offered and received in evidence and identified as Plaintiff's Exhibit No. 123.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, I show you a document identified as Plaintiff's Exhibit No. 124 which is a story in The New York Times, page 38, Saturday, February 18, 1956 and it is entitled, "Tuscaloosa Gets a White Council," by Wayne Phillips, Special to the New York Times, Tuscaloosa, Alabama. Is your testimony the same in regard to those entries?

A. Yes, sir.

Mr. Nachman: We offer this in evidence as Plaintiff's Exhibit No. 124.

(Newspaper article, The New York Times, Saturday, February 18, 1956 entitled "Tuscaloosa Gets a White Council," by Wayne Phillips, Special to The New York Times, datelined Tuscaloosa, Alabama, February 17, offered and received in evidence and identified as Plaintiff's Exhibit No. 124.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, we offer in evidence as our next exhibit, No. 125, two pages consisting of pages 1 and 46 of the February 17th, 1956 edition of The New York Times and I call your attention to the story in the second column from the left and it is entitled, "Alabama U Head Decries [fol. 238] Mob Rule," by Wayne Phillips, Special to The New York Times, datelined Tuscaloosa, Alabama, February 16th. There is a continuation of that story on page 46 in column 2. Once again, do indications from the byline and dateline—your testimony is the same in that regard?

A. Yes, sir.

Mr. Nachman: We offer this in evidence to be identified as Plaintiff's Exhibit No. 125, Your Honor.

The Court: All right. I will let it in subject to objection and exception.

Mr. Embry: We except.

(Newspaper article, The New York Times, Friday, February 17, 1956 entitled, "Alabama U Head Decries Mob Rule," by Wayne Phillips, Special to The New York Times, Tuscaloosa, Alabama, February 16, offered and received in evidence and identified as Plaintiff's Exhibit No. 125.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, I show you a single document identified as Plaintiff's Exhibit No. 126 for identification which is page 21 of the February 16th, 1956 issue of The New York Times and I call your attention to a story entitled, "Student Beaten, Two Negroes Jailed," by Wayne Phillips, Special to The New York Times, Tuscaloosa, Alabama, February 15th. Your testimony is the same in regard to those entries?

A. Yes, sir.

Mr. Nachman: We offer this in evidence to be identified as Plaintiff's Exhibit No. 126.

The Court: Same ruling.

(Newspaper article, The New York Times, Thursday, February 16, 1956, entitled, "Student Beaten, Two Negroes Jailed," by Wayne Phillips, Special to The New York Times, Tuscaloosa, Alabama, datelined February 15, of-
[fol. 239] fered and received in evidence and identified as Plaintiff's Exhibit No. 126.)

Mr. Nachman: As Exhibit No. 127, we offer into evidence two pages, being page 1 and page 17 of The New York Times issue of Tuesday, February 14th, 1956 entitled, "Alabama U to Make High Court Appeal," by Wayne Phillips, Special to The New York Times, Birmingham, Alabama, datelined February 13th. The story is continued on page 17. Again, Mr. Faber, is your testimony the same in regard to the indications of the byline and dateline?

The Witness: Yes, sir.

Mr. Nachman: We offer this in evidence as our next exhibit, if the Court please.

The Court: Same ruling.

(Newspaper article, The New York Times, Tuesday, February 14, 1956 entitled, "Alabama U to Make High Court Appeal," by Wayne Phillips, Special to The New York Times, datelined Birmingham, Alabama, February 13, offered and received in evidence and identified as Plaintiff's Exhibit No. 127.)

Mr. Nachman: Now, we offer into evidence as Plaintiff's Exhibit No. 128, page 8-E of the issue of The New York Times, Sunday, February 12th, 1956 and I call your attention, Mr. Faber, to the caption, "Miss Lucy's Education: Segregation Test Case," by Wayne Phillips, Special to The New York Times, datelined Tuscaloosa, Alabama, February 11. Is your testimony the same in regard to those entries?

The Witness: Yes, sir.

[fol. 240] Mr. Nachman: We offer this in evidence as Plaintiff's Exhibit No. 128.

The Court: Same ruling.

(Newspaper article, The New York Times, Sunday, February 12, 1956, entitled, "Miss Lucy's Education: Segregation Test Case," by Wayne Phillips, Special to The New York Times, datelined Tuscaloosa, Alabama, February 11, offered and received in evidence and identified as Plaintiff's Exhibit No. 128.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, this next story, Plaintiff's Exhibit No. 129 for identification is page No. E-9 and I call your attention to an article entitled, "Organized Resistance to Racial Laws Program," by John Popham, Special to the New York Times, datelined Chattanooga, Tennessee, December 1st. I ask you to look at that and see if there are any indications in that article to indicate that the story arose out of any news gathering activities by Mr. Popham in the State of Alabama among other States—

Mr. Embry: We object to that, Your Honor. We assign the previous objections made, Your Honor, and on the further ground that on its face the document doesn't purport to relate to any activities of The New York Times' employees or anyone else acting for it that might shed any light on activity in Alabama and we object to the question to the witness asking him to interpret the meaning of the context of the words in the article because that is a matter for the Court to determine—

The Court: I don't think he could interpret the meaning of the words in the article but he could tell what a byline or a dateline meant—

Mr. Embry: The question he asked, Your Honor, was did [fol. 241] anything in there indicate to him that the story resulted from any news gathering activities of Mr. Popham in Alabama when he has already identified the dateline as originating in Chattanooga, Tennessee.

Mr. Nachman: Your Honor, this article on its face shows that there is a discussion of activities and events in the State of Alabama among other States mentioned in here. Mr. Faber has already been identified as the person who has certain supervisory activities in regard to these staff correspondents. My question in terms of identifying this document was whether after looking at this document he was able to tell whether any of the activities described in there arose out of any news gathering activities which Mr. Popham engaged in while in the State of Alabama.

Mr. Embry: We further object on the grounds that the document speaks for itself and that would be an invasion of the province of the Court, if the Court please.

The Court: I will let it in and give you an exception.

Mr. Embry: We except.

Mr. Nachman: Your Honor, have you ruled with regard to the answer of the question? I haven't offered it into evidence yet.

The Court: You can answer the question.

Mr. Nachman: Go ahead.

The Witness: No. I can't tell from reading this if that's what's in it.

Mr. Nachman: All right. We will withdraw that document.

Cross examination. (Continued)

By Mr. M. R. Nachman, Jr.:

Q. I show you now, Mr. Faber, a document identified as Plaintiff's Exhibit No. 129 for identification which is page E-3 of The New York Times Sunday edition, March 11th, 1956 and I call your attention to the story entitled, "Tuscaloosa Calm Now, But Tension Runs Deep," by Wayne Phillips, Special to The New York Times, datelined, Tuscaloosa, Alabama, March 10th. Is your testimony the same in regard to the indication of those entries concerning Mr, [fol. 242] Phillips' activities in the State of Alabama?

A. Yes, sir.

Mr. Nachman: We offer this in evidence, if the Court please.

The Court: Same ruling.

(Newspaper article, The New York Times, Sunday, March 11, 1956, page E-3, entitled, "Tuscaloosa Calm Now, But Tension Runs Deep," by Wayne Phillips, Special to The New York Times, Tuscaloosa, Alabama, dated March 10, offered and received in evidence and identified as Plaintiff's Exhibit No. 129.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, I show you a document identified as Plaintiff's Exhibit No. 130 for identification, being page 14 of the Saturday, March 10, 1956 issue of The New York Times and I call your attention to a story entitled, "Miss Lucy Seeks Fall Admission" by Wayne Phillips, Special to The New York Times, Birmingham, Alabama, datelined March 9th. Is your testimony the same in regard to the indication of those entries?

A. Yes, sir.

Q. Now, I also call your attention to the story on the extreme right hand column and it is entitled, "Alabamian urges Folsom's Ouster," Special to The New York Times, Birmingham, Alabama, March 9th. Now, in that second story there is no byline, that is correct, is it not?

A. Yes, sir.

Q. What is the indication there Special to The New York Times? What is that phrase supposed to mean?

A. That means that something came out of Birmingham for The New York Times.

Q. Can we deduce from your answer then, that it did not come from one of the wire services?

[fol. 243] A. Yes, sir. That's right.

Q. It came either from a stringer or from a staff correspondent?

A. That's right.

Mr. Nachman: We offer this into evidence to be identified as Plaintiff's Exhibit No. 130, if the Court please.

The Court: I will let it in. Same ruling.

Mr. Embry: We except.

(Two news articles, The New York Times, Saturday, March 10, 1956, at page 14 entitled, "Miss Lucy Seeks Fall Admission" by Wayne Phillips, Special to The New York Times, Birmingham, Alabama, March 9; and entitled, "Alabamian Urges Folsom's Ouster," Special to The New York Times, Birmingham, Alabama, March 9, offered and received in evidence and identified as Plaintiff's Exhibit No. 130.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, I show you a document identified as Plaintiff's Exhibit No. 131 for identification being page 25 of The New York Times, Wednesday, March 7th, 1956 issue of The New York Times and I call your attention to the article on the left hand column entitled, "Student Exhorts Alabama Raliy," by Wayne Phillips, Special to The New York Times, datelined Birmingham, Alabama, March 6th. Is your testimony the same in regard to those entries?

A. Yes, sir.

Mr. Nachman: We offer this in evidence as our next exhibit, if the Court please.

The Court: I will let it in. Same ruling.

Mr. Embry: We except.

[fol. 244] (Newspaper article, The New York Times, Wednesday, March 7, 1956 at page 26, entitled, "Student

Exhorts Alabama Rally," by Wayne Phillips, Special to The New York Times, datelined Birmingham, Alabama, March 6, offered and received in evidence and identified as Plaintiff's Exhibit No. 131.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, I call your attention to Plaintiff's Exhibit No. 132 for identification to an article in The New York Times under date of Tuesday, March 6th, 1956 at page 24 in the left hand column entitled, "White Councils Split in Alabama," by Wayne Phillips, Special to the New York Times datelined Birmingham, Alabama. Is your testimony the same in regard to this?

A. Yes, sir.

Mr. Nachman: We offer this in evidence, if the Court please.

The Court: I will let it in. Same ruling.

Mr. Embry: We except.

(Newspaper article, The New York Times, Tuesday, March 6, 1956 at page 24 entitled, "White Councils Split in Alabama," by Wayne Phillips, Special to The New York Times, datelined Birmingham, Alabama, offered and received in evidence and identified as Plaintiff's Exhibit No. 132.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. I show you a document identified as Plaintiff's Exhibit No. 133 for identification on page 6-B of The New York [fol. 245] Times issue of Sunday, March 4th, 1956 and I call your attention to the story on the left hand side entitled, "Montgomery is Stage for a Tense Drama," by Wayne Phillips, Special to the New York Times, datelined, Montgomery, Alabama, March 3rd. Is your testimony again the same in regard to the indications of those bylines and datelines?

A. Yes, sir.

Mr. Nachman: We offer this in evidence as Plaintiff's Exhibit No. 133.

The Court: Same ruling.
Mr. Embry: We except.

(Newspaper article, The New York Times, Sunday, March 4, 1956 at page 6-B entitled, "Montgomery is Stage for Tense Drama," by Wayne Phillips, Special to the New York Times, datelined, Montgomery, Alabama, March 3, offered and received in evidence and identified as Plaintiff's Exhibit No. 133.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, I show you a document identified as Plaintiff's Exhibit No. 134 for identification consisting of pages 1 and 52 of The New York Times Sunday edition dated March 4th, 1956 and I call your attention to an article entitled, "Alabama to Heed Courts on Taking Negro Students," by Wayne Phillips, Special to the New York Times, datelined Tuscaloosa, Alabama, March 3rd. Are the indications the same again in regard to Mr. Phillips' activities?
A. Yes, sir.

Mr. Nachman: We offer these two documents into evidence to be identified as Plaintiff's Exhibit No. 134, Your Honor.
The Court: Same ruling.
Mr. Embry: We except.

[fol. 246] (Newspaper article, The New York Times, Sunday, March 4, 1956 at page 1 and page 52 entitled, "Alabama to Heed Courts on Taking Negro Students," by Wayne Phillips, Special to The New York Times, datelined Tuscaloosa, Alabama, March 3, offered and received in evidence and identified as Plaintiff's Exhibit No. 134.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, I show you a document now identified as Plaintiff's Exhibit No. 135 for identification being page 1 of the Friday, March 2nd, 1956 issue of The New York Times and I call your attention to a story entitled, "University Ousts Miss Lucy because of her Charges," by Wayne Phillips, Special to The New York Times, Birmingham,

Alabama, March 1st. Is your testimony the same in regard to the entries as indicated in this story?

A. Yes, sir.

Mr. Nachman: If the Court please, we offer this into evidence to be identified as Plaintiff's Exhibit No. 135.

The Court: I will let it in. Same ruling.

Mr. Embry: We except, if the Court please.

(Newspaper article, The New York Times, New York, Friday, March 2, 1956 entitled, "University Ousts Miss Lucy Because of her Charges," by Wayne Phillips, Special to The New York Times, datelined Birmingham, Alabama, March 1, offered and received in evidence and identified as Plaintiff's Exhibit No. 135.)

[fol. 247] By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, I call your attention to an ad which was introduced this morning entitled, "What the South is Doing about Desegregation." This ad contained several pictures of the correspondents. Do you recall that exhibit from this morning's testimony?

A. Yes, sir.

Q. Now, I show you pages S-1 through S-8 of the Tuesday, March 13th, 1956 issue of The New York Times and ask you whether those pages are the report referred to in the ad which has previously been offered into evidence that I just asked you about?

Mr. Embry: Your Honor, we would like to object. The only thing pertaining to Alabama would appear to be on pages S-6 and continuing on S-7 of the same story of the exhibit that he is now referring to which is Plaintiff's Exhibit No. 136 for identification and it has no dateline indicating where anybody went, if any place, to write such an article and so we add to our previous grounds of objection that it would not be evidence of whether anything was done in Alabama by The New York Times Company at the time it purports to show on its face that the article was prepared. I believe that's dated March 13th, 1956.

Mr. Nachman: Your Honor, we have no desire to introduce into evidence the pages which pertain to States other

than Alabama and we will therefore limit our offer to pages S-6 and S-7.

The Court: Well, so limited, I think it would be admissible.

Mr. Embry: I added some grounds of objection, Your Honor, and I believe that I pointed out there is no dateline or byline on it.

Mr. MacLeod: Wait just a minute.

Mr. Embry: May I ask the witness a question.

Mr. Nachman: Go ahead.

Mr. Embry: Do you know where that article was written?

The Witness: Yes.

[fol. 248] Mr. Embry: Where was it written?

The Witness: It was written in New York City.

Mr. Embry: We renew our objections, if the Court please.

The Court: Overruled and give you an exception.

Mr. Nachman: Your Honor, may I ask a few questions that will tie that in with the ad which we have previously offered into evidence?

The Court: Yes. There was testimony from this witness earlier—something was said about seventeen Southern States.

Mr. Nachman: That's right.

The Court: I believe he said that that included the State of Alabama.

Mr. Nachman: All right, Your Honor. That's what I wanted to bring out and I will not ask any more questions along that line. We offer these two pages into evidence identified as Plaintiff's Exhibit No. 136 being S-6 and S-7 of The New York Times dated Tuesday, March 13th, 1956.

(Newspaper article, The New York Times, Tuesday, March 13th, 1956 being pages S-6 and S-7 entitled, "States Resisting," by Peter Kihss, offered and received in evidence and identified as Plaintiff's Exhibit No. 136.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, I show you a document identified as Plaintiff's Exhibit No. 137 marked for identification which

is either page 16 or 26 of the Tuesday, March 13th, 1956 issue of The New York Times and I call your attention to a story on the left hand column entitled, "Alabama Expells Student in Riots," by Wayne Phillips, Special to The New York Times, datelined Tuscaloosa, Alabama, March 12th. Is your testimony the same as it has been in the [fol. 249] previous questions concerning the dateline and byline and Wayne Phillips?

A. Yes, sir.

Mr. Nachman: We offer this in evidence, if the Court please.

The Court: I will let it in. Same ruling.

Mr. Embry: We except.

(Newspaper article, The New York Times, Tuesday, March 13, 1956, page 16 entitled, "Alabama Expells Student in Riots," by Wayne Phillips, Special to The New York Times, Tuscaloosa, Alabama, offered and received in evidence and identified as Plaintiff's Exhibit No. 137.)

Mr. Embry: Now, Your Honor, we object to this document Mr. Nachman is getting ready to introduce into evidence which is marked as Plaintiff's Exhibit No. 138, for identification. All this purports to be is page E-9 from the issue of March 18th, 1956 from The New York Times Sunday edition which is entitled, "Report on the South: A Summary of the New York Times Survey." There is nothing in there indicating a dateline or indicating any activity in the State of Alabama. It is just a series of writings about the whole South. There is no reference to Alabama and no dateline and it doesn't shed any light on the activities of The Times people in Alabama and we offer to show by this witness that that was written in New York City.

Mr. Nachman: Your Honor, our theory of admissibility on this is that the article begins, I believe, in italized words with reference to a survey, part of which is in evidence as Plaintiff's Exhibit No. 136 and a reference is made to the ad I have previously referred to and it is quite obvious, Your Honor, that that purports to be based on the result of the news gathering activities which appear in these

other exhibits, namely, 136 and the ad I have previously [fol. 250] referred to and that, therefore, the contents of the stories are based so far as they relate to Alabama to news gathering activities which took place here—

Mr. Embry: How far afield can we get, Your Honor? You might pick a book off a bookshelf in China which purportedly relates what one person thinks or tells about an idea they may have or something that occurs in Bangkok or Siam. Does that have any probative value indicating what that person may or may not have done? Is it any evidence at all that anybody went into Alabama and that that resulted from their going in to Alabama and, if so, who it was and when it happened and what happened? It is getting so far afield, Judge, that we are getting out of this world and into orbit.

The Court: Well, I will take it in connection with that advertisement and everything and the maps of Alabama there and I think it is admissible. I will let it in and give you an exception.

Mr. Embry: We except, if the Court please.

Mr. Nachman: We offer this in evidence.

(Newspaper article, The New York Times, Sunday, March 18th, 1956, page E-9 entitled, "Report on the South: A Summary of The New York Times Survey," offered and received in evidence and identified as Plaintiff's Exhibit No. 138.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, I show you now Plaintiff's Exhibit No. 139 for identification consisting of two pages from The New York Times, Thursday, March 1st, 1956 entitled, "U. S. Judge Orders Alabama Co-Ed to be Reinstated," by Wayne Phillips, Special to The New York Times, Birmingham, Alabama, February 29th. Again, I ask you the same question regarding Mr. Phillips' activities and about the byline and dateline.

A. Yes, sir.

[fol. 251] Mr. Nachman: We offer this into evidence as Plaintiff's Exhibit No. 139, Your Honor.

The Court: I will let it in. Same ruling.
Mr. Embry: We except, Your Honor.

(Newspaper article, The New York Times, Thursday, March 1, 1956, page 1 and page 28 of article captioned, "U. S. Judge Orders Alabama Co-Ed to be Reinstated," by Wayne Phillips, Special to the New York Times, Birmingham, Alabama dateline, February 29, offered and received in evidence and identified as Plaintiff's Exhibit No. 139.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, I now show you Plaintiff's Exhibit No. 140 for identification consisting of two pages, page 1 and page 23 of The New York Times dated Wednesday, February 29, 1956 and I call your attention to an article in the lower right hand column there entitled, "Folsom to Call Special Session," by Wayne Phillips, Special to the New York Times, datelined Montgomery, Alabama, February 28th. The story is continued on page 23. Again, does the dateline and byline indicate the same as to Mr. Phillips' activities?

A. Yes, sir.

Mr. Nachman: We offer this in evidence as our next exhibit, if the Court please.
The Court: Same ruling.
Mr. Embry: We except.

(Newspaper article, The New York Times, Wednesday, February 29, 1956, page 1 and page 23 entitled, "Folsom to Call Special Session," by Wayne Phillips, Special to the New York Times, Montgomery, Alabama, February 28, offered and received in evidence and identified as Plaintiff's Exhibit No. 140.)

[fol. 252] By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, I now show you a news article consisting of two pages identified as Plaintiff's Exhibit No. 141 of pages 1 and 38 of the February 11th, 1956 issue of The New York Times and I call your attention to the story

in the center of the pages entitled, "Ten Thousand in Alabama Hail Segregation," by Wayne Phillips, Special to The New York Times, datelined Montgomery, Alabama, February 10th. Again, the same question, do those entries indicate the same thing in regard to Mr. Phillips?

A. Yes, sir.

Mr. Nachman: We offer this in evidence as our next exhibit, if the Court please.

The Court: Same ruling.

Mr. MacLeod: We except, if the Court please.

(Newspaper article, The New York Times, Saturday, February 11, 1956, page 1 and page 38 entitled, "Ten Thousand in Alabama Hail Segregation," by Wayne Phillips, Special to The New York Times, Montgomery, Alabama, February 10, offered and received in evidence and identified as Plaintiff's Exhibit No. 141.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, I show you a document identified as Plaintiff's Exhibit No. 142 for identification which is page 45 of the Sunday, April 29th, 1956 issue of The New York Times and I call your attention to a story entitled, "Students Weigh Solution of Bias," by John Popham, Special to The New York Times, Talladega, Alabama, April 28th. Do the insertions here and the references to Mr. Popham [fol. 253] and the dateline and the caption, Special to The New York Times—does that carry the same connotation as the similar references to Mr. Phillips in the previous exhibits?

A. Yes, sir. That's correct.

Mr. Nachman: We offer this in evidence.

The Court: I will let it in. Same ruling.

Mr. Embry: We except.

(Newspaper article, The New York Times, Sunday, April 29, 1956, page 45 entitled; "Students Weigh Solution of Bias," by John N. Popham, Special to The New York Times, datelined Talledega, Alabama, April 28, offered and received in evidence and identified as Plaintiff's Exhibit No. 142.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. I show you a document entitled Plaintiff's Exhibit No. 143 for identification, Mr. Faber, being page 15 of The New York Times, dated Friday, April 27th, 1956 and I call your attention to the article entitled, "Negroes to Keep Boycotting Busses," by John N. Popham, Special to The New York Times, datelined, Montgomery, Alabama, April 26th. Again, I ask you the same question regarding the indications from those entries of the byline and dateline.

A. The same.

Q. Sir?

A. My answer that it is the same.

Mr. Nachman: We offer this in evidence, if the Court please.

The Court: I will let it in. Same ruling.

Mr. Embry: We except.

[fol. 254] (Newspaper article, The New York Times, Friday, April 27, 1956, page 15 entitled, "Negroes to Keep Boycotting Busses," by John N. Popham, Special to The New York Times, datelined Montgomery, Alabama, April 26, offered and received in evidence and identified as Plaintiff's Exhibit No. 143.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, I show you a document identified as Plaintiff's Exhibit No. 144 for identification which is page 27 of the April 26th, 1956 issue of The New York Times and I call your attention to the story on the left hand side of the document entitled, "Bus Boycott Firm in Alabama City," by John N. Popham, Special to The New York Times, datelined Montgomery, Alabama, April 25th. I ask you the same question regarding the connotation of the entries on that story as they relate to Mr. Popham's activities in Alabama?

A. My answer is the same.

Mr. Nachman: We offer this in evidence, if the Court please.

The Court: I will let it in.
Mr. Embry: We except.

(Newspaper article, The New York Times, Thursday, April 26, 1956, page 27 entitled, "Bus Boycott Firm in Alabama City," by John N. Popham, Special to The New York Times, datelined Montgomery, Alabama, April 25, offered and received in evidence and identified as Plaintiff's Exhibit No. 144.)

[fol. 255] By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, I show you a document identified as Plaintiff's Exhibit No. 145, being page 15 of The New York Times edition, Saturday, March 24, 1956, with a story entitled, "Conviction Spurs Negroes' Boycott," by Wayne Phillips, Special to The New York Times, datelined Montgomery, Alabama, March 23rd. Again, I ask you the same question regarding Wayne Phillips and the dateline and byline.
A. Same answer.

Mr. Nachman: We offer this in evidence as Plaintiff's Exhibit No. 145, Your Honor.
The Court: Same ruling.
Mr. Embry: We except.

(Newspaper article, The New York Times, Saturday, March 24, 1956, page 15, entitled, "Conviction Spurs Negroes' Boycott," by Wayne Phillips, Special to the New York Times, datelined Montgomery, Alabama, March 23, offered and received in evidence and identified as Plaintiff's Exhibit No. 145.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, I show you two documents identified as Plaintiff's Exhibit No. 146 which are pages 1 and 28 of the Friday, March 23rd, 1956 issue of The New York Times and it is entitled, "Negro Minister Convicted of Directing Bus Boycott," by Wayne Phillips, Special to the New York Times, datelined Montgomery, Alabama, March 22nd. I ask you the same question once again in regard to entries

on the page there and regarding the dateline and the byline and Wayne Phillips.

A. Same answer, sir.

Mr. Nachman: We offer this in evidence as Plaintiff's Exhibit No. 146, Your Honor.

[fol 256] The Court: Same ruling.

Mr. Embry: Same exception.

(Newspaper article, The New York Times, Friday, March 23, 1956, page 1 and page 28 entitled, "Negro Minister Arrested of Directing Bus Boycott," by Wayne Phillips, Special to The New York Times, datelined Montgomery, Alabama, March 22, offered and received in evidence and identified as Plaintiff's Exhibit No. 146.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, I show you a document identified as Plaintiff's Exhibit No. 147 which is page 6 of The New York Times, dated Monday, December 24th, 1956, entitled, "Shot Hits Home of Bus Bias Foe," by George Barrett, Special to The New York Times, datelined Montgomery, Alabama, December 23rd. I ask you the same question in regard to Mr. Barrett's activities pertaining to the dateline and the byline on that story.

A. Same answer.

Q. The same answer as you gave in regard to Mr. Phillips?

A. Yes, sir.

Mr. Nachman: We offer this in evidence as Plaintiff's Exhibit No. 147.

The Court: I will let it in. Same ruling.

Mr. Embry: We except.

(Newspaper article, The New York Times, Monday, December 24, 1956, page 6, entitled, "Shot Hits Home of Bus Bias Foe," by George Barrett, Special to the New York Times, datelined Montgomery, Alabama, December 23, offered and received in evidence and identified as Plaintiff's Exhibit No. 147.)

[fol. 257] By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, I now show you a document identified as Plaintiff's Exhibit No. 148 being the Sunday, December 23, 1956 issue of The New York Times at page 14 and I call your attention to the story on the left hand side of the document entitled, "White Dissidents Stir Bus Clashes," by George Barrett, Special to The New York Times, datelined Montgomery, Alabama, December 22nd. Again I ask you the same question regarding the byline and the dateline in regard to George Barrett's activities in the State of Alabama.

A. Same answer.

Mr. Nachman: We offer this in evidence as Plaintiff's Exhibit No. 148.

The Court: Same ruling.

Mr. Embry: We except.

(Newspaper article, The New York Times, Sunday, December 23, 1956, page 14, entitled, "White Dissidents Stir Bus Clashes," by George Barrett, Special to The New York Times, datelined Montgomery, Alabama, December 22, offered and received in evidence and identified as Plaintiff's Exhibit No. 148.)

Mr. Embry: Are you through with 1956, Mr. Nachman?

Mr. Nachman: I think we are substantially through with it. There may be a few more—

Mr. Embry: If I may interrupt—

Mr. Nachman: Go ahead.

Mr. Embry: Apparently, Your Honor, a lot of these are not subject to any special objections other than the omnibus [fol. 258] objection that I made and it may be that we can save time if they have these things laid out where we can go through these and we can probably take those out that we have any special objections to and then without Your Honor having to sit here on the bench going through them one by one we can number those that we propose to let in as exhibits and in the morning, the first thing, we can take all of those that we have no special objections to and we can call off these numbers and Mr. Faber can already have examined them and he can ask him the same

question he has been asking in reference to each one and they can go on in subject to our omnibus objection—

Mr. Nachman: I quite agree with that suggestion.

Mr. Embry: Then, Your Honor, we can state our special or additional grounds as to the others.

The Court: Well, I think that during the evening recess perhaps counsel might write out all his objections and grounds thereto and that might save you from stating them over and over again.

Mr. Embry: Well, of course, Your Honor, we have a long series of objections in the Record when he initially started which I understand under our agreement are being applied to each of these admitted exhibits—

The Court: How many more exhibits do you have, Mr. Nachman?

Mr. Nachman: On these staff stories, Your Honor, there are roughly forty-five to fifty more. I am just guessing now. We also have a series of specials, that is, stories that do not carry any bylines but special stories identified by Mr. Faber. I don't have my list here but there are a good number of those and I would say around one hundred or more.

Mr. Embry: What are those?

Mr. Nachman: The special stories issued by The New York Times which do not carry any byline or name. We also have—this will probably not come out in the cross examination of Mr. Faber, but it will come out during the course of these proceedings—we have a series of advertisements in The New York Times which we have also [fol. 259] catalogued and I think we could treat those in the same manner if we could get together with counsel and go over all of these proposed exhibits, I think as was suggested earlier that we can agree to have these introduced into evidence in bulk and sift out those that maybe subject to some special objection or those that differ in any way from the mass of the documents. In our preparation of the case we have attempted to classify them as accurately as we were able to. I know that at this time we are not beyond the staff stories now but I mention this for the information of the Court that we do have

other documents and if we can reach an agreement on this we will most certainly save the time of all concerned.

Mr. Embry: Well, we will look into that and see if the others can be handled the same way.

Mr. Nachman: Well, we are for any process that will speed it up. We don't want to burden anybody.

Mr. Embry: Well, you have about half of them in now, don't you?

Mr. Baker: Not quite.

Mr. Beddow: Well, aren't all of those along the same lines as those you have already introduced? Of course, you know that we raised the point that whatever testimony you had in connection with somebody writing a story that was written under a byline or written under a name or a special item of The New York Times—we argued that it was accumulative and it seems to me that it is still accumulative.

Mr. Nachman: Each one of these stories relates to different news gathering activities by staff correspondents and at a different time. There has been a great deal of it in Alabama.

Mr. Baker: I would say this, Your Honor. We furnish them with a list of them and we can let them go over them tonight and we can meet them up here at 9:30 o'clock in the morning and see what we can work out.

Mr. Embry: I will concur in that suggestion, Mr. Baker.

(Off the Record discussion between counsel.)

[fol. 260] The Court: Well, we will recess until morning—

Mr. Nachman: Your Honor, we have just a few more if we could get these in.

The Court: Go ahead.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber: I show you a document identified as Plaintiff's Exhibit No. 149, for identification consisting of two pages being pages 1 and 11 of the December 22nd, 1956 issue of The New York Times and I call your attention to a story entitled, "But Integration in Alabama Calm,"

by George Barrett, Special to The New York Times, datelined Montgomery, Alabama, December 21. Again I ask you the same question in regard to the dateline and byline.

A. Same answer.

Mr. Nachman: We offer these in evidence, if the Court please.

The Court: Same ruling.

Mr. Embry: We except.

(Newspaper article, The New York Times, Saturday, December 22, 1956, page 1 and page 11, entitled "Bus Integration in Alabama Calm," by George Barrett, Special to The New York Times, Montgomery, Alabama, December 21, offered and received in evidence and identified as Plaintiff's Exhibit No. 149.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, I show you two documents identified as Plaintiff's Exhibit No. 150 for identification which appear in the New York Times Magazine dated December 16th, 1956, being an article entitled, "Montgomery: Testing Ground," by George Barrett, datelined Montgomery, Alabama. Does that indicate that Mr. Barrett was in Alabama [fol. 261] and that the news story in the magazine resulted from his activities in Alabama?

A. Yes, sir.

Q. From the news that he gathered at that time.

A. Yes, sir.

Mr. MacLeod: Would that indicate when he was in Alabama?

The Witness: No, sir.

Mr. Nachman: We offer this in evidence, Your Honor, as our next exhibit.

(Newspaper article, The New York Times, Sunday, December 16, 1956, entitled, "Montgomery: Testing Ground," by George Barrett, datelined Montgomery, Alabama, offered and received in evidence and identified as Plaintiff's Exhibit No. 150.)

Mr. Beddow: What does that relate to, Mr. Nachman?

Mr. Nachman: This was an article entitled "Montgomery: Testing Ground," by George Barrett in The New York Times magazine. That is as far as we can go tonight, Your Honor.

The Court: Very well. Court is recessed until ten o'clock tomorrow morning.

(Court recessed Monday, July 25, 1960 until Tuesday, July 26, 1960 at 10:00 o'clock P. M.)

Mr. Nachman: Your Honor, I believe we have made some progress in the handling of these documents over night and I think we have substantially expedited the matter. We have two rolls of the so-called staff stories which are stories written by the staff correspondents of The New York Times about which we had the lengthy examination yesterday. We have agreed with counsel that they will go in subject to the general objections that they made yesterday with regard to the many exhibits which covered these stories and subject to the same testimony of Mr. Faber [fol. 262] regarding the meaning of the dateline and byline that appears on each one of those and we can put them in now and the Court Reporter may identify them. We have already numbered them, Your Honor.

Mr. Embry: We have also agreed, Your Honor, that should a transcript be required that the stipulation covers the actual writing in by each question the objections that were originally made and that the answers be written in in the words of Mr. Faber rather than just saying, same answer. According to the Court Reporter, the last exhibit last night was numbered 150 and we started numbering these consecutively but somewhere we made an error and we began with No. 154, and we will let the Court Reporter straighten them out, through No. 173.

Mr. Nachman: We offer them in evidence then, through 173.

Mr. Embry: Subject to our original objections and exceptions as previously indicated.

The Court: All right.

(Plaintiff's Exhibit No. 151, No. 152 and No. 153 void: due to error in marking by counsel.)

(Newspaper articles of The New York Times offered and received in evidence in bulk by the aforegoing stipulation and identified as Plaintiff's Exhibits No. 154 to 163 and 164 to 173, inclusive.)

Mr. Nachman: Now, Your Honor, we have some more to introduce individually rather than in bulk.

The Court: Go ahead.

Cross examination. (Continued)

By Mr. M. R. Nachman, Jr.:

Q. Mr. Faber, I show you a document identified as Plain-
[fol. 263] tiff's Exhibit No. 174 for identification and I call your attention to the story entitled, "School Fight Opens in Deep South," by John N. Popham, Special to The New York Times, datelined Chattanooga, Tennessee, January 18th.

The Court: What year?

Mr. Nachman: 1958, Your Honor. Our theory of admissibility is that that story represents the result of news gathering by Mr. Popham who was, if I recall Mr. Faber's testimony correctly, the Southern correspondent for The New York Times at that time and it contains the result of his news gathering activities in Alabama as well as in other States covered by this article.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Am I correct, Mr. Faber, that there are references to Alabama in this news story?

A. I see the word, "Alabama" in one paragraph. I see a reference to suits that have been filed in Birmingham and Atlanta plus a reference to integration in Montgomery.

Q. Am I also correct in stating that Mr. Popham was the Southern correspondent for The New York Times as of January 19th, 1958?

A. Yes, sir.

Q. Was he so engaged during the period of time preceding that date?

A. Yes, sir.

Q. Was Alabama included within the area that he covered, namely, the Southern area of the Southern States?

A. Yes, sir. The Southern States.

Mr. Nachman: With that predicate, Your Honor, we offer this into evidence.

Mr. Embry: If the Court please, as additional grounds of objection, we state that it couldn't be relevant or material because the only thing shown by the document is that there is a mention of the State of Alabama by word reference.

The Court: I will let it in and give you an exception.

Mr. Embry: We except.

[fol. 264] (Newspaper article, The New York Times, Sunday, January 19, 1958, page E-9 entitled, "School Fight Opens in Deep South," by John N. Popham, Special to The New York Times, datelined Chattanooga, Tennessee, January 18, offered and received in evidence and identified as Plaintiff's Exhibit No. 174.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, I show you a document identified as Plaintiff's Exhibit No. 175 which is a photostat of The New York Times edition of Sunday, January 24, 1960 and I call your attention to a story entitled "U. S. Negro Gains Held Scant in '59," by Claude Sitton, Special to The New York Times, datelined Atlanta, Georgia, January 23rd. Now, I ask you whether as of the date of this article and for a period of time preceding it which you may limit as you desire, whether Mr. Sitton was Southern correspondent for The New York Times?

A. Yes, he was.

Q. And again, was Alabama within the area that he covered?

A. Yes, sir.

Q. I will ask you whether that story refers to events or circumstances in Alabama?

A. It refers to Tuskeegee Institute.

Q. Is that in Alabama?

A. It says here at Tuskeegee, Alabama.

Mr. Nachman: Our theory again, Your Honor, is the same in that this story resulted from the news gathering activities of Mr. Sitton in Alabama.

Mr. Embry: We object, Your Honor. That paper does not reflect any activity of and shed no light on whether there was any activity on the part of any employee, agent or servant of The New York Times Company in the State of Alabama.

[fol. 265] The Court: I will let it in. Same ruling.

Mr. Embry: We except.

(Newspaper article, The New York Times, Sunday, January 24, 1960 at page 57 entitled "U. S. Negro Gains Held Scant in '59," by Claude Sitton, Special to The New York Times, datelined Atlanta, January 23, offered and received in evidence and identified as Plaintiff's Exhibit No. 175.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, I show you an article from The New York Times of Tuesday, January 20th, 1959 at page 30 entitled "Patterson Backs Separate Schools," Montgomery, Alabama, January 19th and on the right hand side of that story appears a picture which is captioned as follows: "Sworn In: Governor John Patterson of Alabama, Who took office yesterday, watches inaugural parade in Montgomery. With him is his grandmother, Mrs. R. D. Patterson. Associated Press Wire Photo." Now, would you explain to the Court what arrangements the Times made, if you know, for the obtaining and printing of that photograph?

A. I have no connection at all with the obtaining or printing of pictures.

Q. Do you happen to know how The Times would obtain such a picture as that?

A. Well, we receive pictures from the Associated Press and now the United Press by wire photo machine and by delivery to us at our office.

Q. Would you state to the Court what arrangements The Times has, if any, with the Associated Press for news stories?

A. Yes. We receive news stories on an A P ticker machine which is located within our office.

Q. Do they come from Associated Press reporters in Alabama?

A. Well, they come basically from the New York relay [fol. 266] point of the Associated Press and I assume it comes into them there somehow.

Q. Does The Times have any regular procedure for studying Associated Press news reports which come in about events in Alabama in order to determine whether any of those reports are newsworthy and should be published in The New York Times?

A. Yes—

Mr. Embry: We object to that, if the Court please—

The Court: Well, it would have to be limited to the Times.

Mr. Nachman: Well, I thought I had so limited it.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. As I understand your testimony, Mr. Faber, you do receive through the Associated Press wire service Associated Press stories that come in from Alabama, do you not?

A. Yes, sir.

Q. Then, the question I asked was whether or not The New York Times has any regular procedure for selecting from among the stories that come in about Alabama those Associated Press stories that it will publish as being newsworthy.

A. Well, we get A.P. stories from all over the country and when I see them they come across my desk and I make a selection of those that I think are newsworthy and throw away the ones that I don't think are newsworthy.

Mr. Nachman: Your Honor, we offer this into evidence on the theory that it obviously relates to an important news event in Alabama and is news coverage in Alabama by the Associated Press which The Times has taken and published.

Mr. Embry: We object on the further grounds, Your Honor, that it shed no light on the activities on the part of The New York Times or by its agents, servants or em-

ployees in the State of Alabama, and on its face shows that it has been purchased from an organization which this testimony disclosed previously that The New York Times Company buys that by contract and does not gather it through [fol. 267] its own activities.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, what arrangements does The New York Times have with the Associated Press, if you know, sir?

A. My only knowledge is that the wire is copied that comes across my desk.

Q. Do you know anything about the financial arrangement that The New York Times has with The Associated Press?

A. No, sir.

Mr. Loeb: Mr. Nachman, I may be able to throw some light on this if I may be permitted to make a statement.

Mr. Nachman: Go ahead, sir.

Mr. Loeb: The New York Times is a member of the Associated Press which is a newspaper all over the country —newspapers all over the country are members of the Associated Press and as members of the Associated Press, they receive all the wire reports from the Associated Press and have the right to use the Associated Press to supply them with pictures that the Associated Press acquires or takes or purchases or however they get them. Those wire reports come in on a regular machine and are sorted out along with all the other copy that comes in not only from the Associated Press but from the United Press and their own correspondents but The New York Times would have absolutely nothing to do with any gathering of any news reports or news items that come in to its New York office across the Associated Press wire from the Associated Press office in New York.

Mr. Nachman: May I ask you a question in connection with that, Mr. Loeb?

Mr. Loeb: Yes. Go ahead.

Mr. Nachman: I am correct, sir, am I not, in stating that The New York Times makes a certain payment for its membership in the Associated Press?

Mr. Loeb: Yes. Every member in the Associated Press does. It depends on the circulation. I think that the amount [fol. 268] of dues that a member in the Associated Press pays to the Associated Press is in proportion to the circulation of the member newspaper.

Mr. Nachman: I assume that the advantage of membership in this organization is that The New York Times and other member newspapers can take advantage of the news gathering activities of the Associated Press.

Mr. Loeb: Sure.

Mr. Nachman: Your Honor, we think that certainly under the recent United States Supreme Court decision of this year in March, Scripto against Carson, wherein the Supreme Court said that the fact that business was done through independent contractors was irrelevant and that it was nevertheless doing business. Here, we have the situation where The New York Times is actually a member of a news gathering organization and for the stated purpose of being able to take advantage of the news gathering activities of this organization and we think that the stories should be admissible and we offer it into evidence on that basis.

Mr. Embry: Your Honor, we renew our objections on the additional and special grounds just stated to the Court in that it shows on its face that it was not the result of any activity on the part of either an agent, servant or employee of The New York Times Company, a corporation, and as a matter of fact, it shows on its face quite to the contrary. It shows that it is the result of something furnished to the New York Times by another organization which the testimony has shown to be independent of an unconnected with The New York Times Company. It certainly wouldn't shed any light on what, if anything, was done about the period that it purports to cover which was January 20th, 1959 in Alabama with respect to any activity or not on the part of this defendant in Alabama at that period of time.

The Court: Well, I think it has some circumstantial evidence and I will let it in and give you an exception.

Mr. Embry: We except.

Mr. Baker: Your Honor, is Mr. Loeb's statement a part of the Record? We would like the statement that he made

[fol. 269] to be a part of the Record concerning the relationship between The New York Times and the Associated Press and the United Press.

Mr. Loeb: Well, I assume it was a part of the Record. I wasn't talking off the Record.

Mr. Baker: Well, I just wanted to make certain of that.

Mr. Loeb: I just can't resist, Your Honor, getting up and making one more statement. The admission of this last exhibit just about reaches the ultimate in stretching the concept of doing business. It is beyond anything I have ever heard in my life.

The Court: Well, I will let it in and give you an exception.

(Newspaper article, The New York Times, Tuesday, January 20, 1959 at page 30 entitled, "Patterson Backs Separate Schools," datelined Montgomery, Alabama, January 19, offered and received in evidence and identified as Plaintiff's Exhibit No. 176.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Next, Mr. Faber, I show you Plaintiff's Exhibit No. 177 for identification consisting of two pages, pages 1 and 40 of the March 22nd, 1959 issue of The New York Times and it is entitled, "Dixiecrat Move Gains Adherents," by Claude Sitton, Special to The New York Times, datelined Atlanta, March 21st. I ask you once again, Mr. Faber, whether Mr. Sitton was the Southern correspondent of The New York Times on that date and whether he had been for a period of time before that?

Mr. Embry: Now, we object to that question, Your Honor, on the grounds that although it has been shown he was the Southern correspondent this document sheds no light on whether—this document sheds no light on anything he may have done in Alabama or what this corporation may or may not have done in Alabama.

[fol. 270] Mr. Nachman: Well, if it is conceded that Mr. Sitton was, then I will withdraw that part of the question. Our theory of admissibility, Your Honor, is that again as in the earlier exhibits that this is the result of Mr. Sitton's news gathering activities in Alabama.

The Court: Let me read it.

Mr. Nachman: Here it is, Your Honor.

The Court: I think there is some question as to the admissibility of this. Let me exclude it.

(Newspaper article, The New York Times, Sunday, March 22nd, 1959, page 1 and page 40, entitled, "Dixiecrat Move Gains Adherents," by Claude Sitton, Special to The New York Times, datelined Atlanta, March 21st, offered in evidence as Plaintiff's Exhibit No. 177, but disallowed and excluded by the Court.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, I show you a document identified as Plaintiff's Exhibit No. 178 for identification which is page 30 of the July 7th, 1959 issue of The New York Times showing the title, "Birmingham Resists Church Integration," by John Wicklein and there is no dateline. I will ask you what the absence of a dateline on this story means? What does that mean, if anything?

A. Well, it means that Mr. Wicklein wrote this piece in New York City.

Q. Do you happen to know whether Mr. Wicklein came into Birmingham in order to gather material for that story?

A. Yes, I do.

Q. You know that he did?

A. Yes, he did.

Q. There are photographs in here of Bishop Bachman G. Hodge and Mrs. M. E. Tilly and Rev. Fred L. Shuttlesworth. Is that right?

A. Yes, sir.

[fol. 271] Q. Now, the Rev. Fred L. Shuttlesworth's photograph has an Associated Press caption and the other two have no caption. Do you happen to know where the two without captions were obtained?

A. No, I don't.

Mr. Nachman: If the Court please, we offer this in evidence on the statement of the witness that he knows that Mr. Wicklein came in to Birmingham to obtain this story.

Mr. Embry: Your Honor, we object on the further ground that that's not the best evidence of any activity as to what Mr. Wicklein may or may not have done and when he did it. It doesn't shed any light on his activities in the State of Alabama for and on behalf of The New York Times Company so as to be of any evidential value as to whether they did business or not at about the time of attempted service and summons of process on this defendant in April of 1960 or at the time of the issue of that newspaper.

The Court: I think this exhibit in connection with Mr. Faber's testimony is admissible. You may have an exception.

Mr. Embry: We except.

(Newspaper article, The New York Times, Tuesday, July 7, 1958 at page 30 entitled, "Birmingham Resists Church Integration," by John Wicklein, offered and received in evidence and identified as Plaintiff's Exhibit No. 178.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. I show you now, Mr. Faber, two documents identified as Plaintiff's Exhibit No. 179 for identification at pages 1 and 44 of the November 29th, 1959 issue of the Sunday New York Times and I call your attention to the story entitled "Racial Curbs Eased by Southern Hotels," by Claude Sitton, Special to The New York Times, datelined Atlanta, November 28th.

A. Yes, sir. I see it.

[fol. 272] Mr. Nachman: Mr. Embry, if there is no question but that Mr. Sitton was the Southern correspondent at that time, then I will not go into that again.

Mr. Embry: From a period of November 9, 1958 to the present—

Mr. Nachman: To November 29th, 1959. Again, Your Honor, we offer this in evidence on the same theory as the stories by the other correspondents.

Mr. Embry: We add the specific objection, Your Honor, that the dateline shows it is Atlanta and it shows according to the testimony that the article was prepared in Atlanta and it sheds no light on the activities of that indi-

vidual as can be determined from the context of the article and sheds no light on the activities of that individual in Alabama either at the time of service of summons and process in April of 1960 or at the time of the issue of the paper in November of 1959.

Mr. Nachman: I call Your Honor's attention to the second column of the second page in this news story which talks about reasons cited by hotel and convention executives in Atlanta and Birmingham.

Mr. Embry: We object on the further ground that it appears to be an article dealing with the whole South, Your Honor, and not just with Alabama.

The Court: Let me see the article. I will exclude that one.

(Newspaper article, The New York Times, Sunday, November 29, 1959, pages 1 and 44 entitled, "Racial Curbs Eased by Southern Hotels," by Claude Sitton, Special to The New York Times, Atlanta, November 28, offered in evidence as Plaintiff's Exhibit No. 179 disallowed and excluded by the Court.)

[fol. 273] Mr. Embry: Now, Your Honor, we have Exhibit No. 180 here to which we assign the same additional special objections.

Mr. Nachman: Plaintiff's Exhibit No. 180, Your Honor, is a story by Claude Sitton, Special to The New York Times, datelined Atlanta, of the March 6th, 1960 issue of the Sunday New York Times at page E-3 describing "The Mood of the South—and the Status now of Civil Rights." In this article, Your Honor will find discussions of demonstrations in Montgomery and references to statements issued by clergymen and educators, lawyers, doctors and business men and a quotation from Ralph Abernathy.

The Court: That's one of our local clergymen?

Mr. Nachman: One of our local clergymen. Yes, sir.

The Court: Where is the reference to Abernathy?

Mr. Nachman: Right there, Your Honor.

The Court: I think this might indicate some news gathering here in the State and I will let that one in.

Mr. Embry: We except, Your Honor.

Mr. Nachman: Our next exhibit, Your Honor—

The Court: Let me see that last exhibit once again. No. 180. I doubt that this one is connected sufficiently with Alabama. Let me backtrack and exclude that one. Plaintiff's Exhibit No. 180 is excluded.

(Newspaper article, The New York Times, Sunday, March 6, 1960, at page E-3 entitled, "The Mood of the South—And the Status Now of Civil Rights," by Claude Sitton, Special to The New York Times, Atlanta, March 5, offered in evidence as Plaintiff's Exhibit No. 180 disallowed and excluded by the Court.)

Mr. Nachman: If the Court please, in line with the Court's ruling we will withdraw Plaintiff's Exhibit No. 181 [fol. 274] marked for identification which had pictures taken on the same day. We will withdraw that one.

(Plaintiff's Exhibit No. 181 for identification withdrawn by counsel for the Plaintiff.)

Mr. Nachman: Plaintiff's Exhibit No. 182 for identification is page E-5 of The New York Sunday Times of September 8th, 1957 entitled "Integration: Actions by States," by John N. Popham, Special to The New York Times, datelined Little Rock, Arkansas, September 7th. Is there any question, Mr. Embry, about Mr. Popham's relationship with The Times as the Southern correspondent?

Mr. Embry: Whatever the testimony was about him.

Mr. Nachman: He was the Southern correspondent at that time, Mr. Faber?

The Witness: Yes, sir.

Mr. Nachman: This story too, Your Honor, contains a discussion about the integration question in the States and mentions in the article Alabama and was the result of the news gathering activities—

The Court: In this article?

Mr. Nachman: Yes, sir.

The Court: Where does this article show that he was in Alabama to gather all this information?

Mr. Embry: It doesn't show it, Your Honor.

Mr. Nachman: Your Honor, we submit that Mr. Popham covered the States in his territory and according to the testimony Alabama is included therein and that when he

writes about a situation in Alabama it shows that he must have some basis for the fact that he had written about Alabama—

The Court: Well, he could have gotten this information from some place else without coming into the State. Let me exclude this and give you an exception.

[fol. 275] (Newspaper article, The New York Times, Sunday, September 8, 1957, page E-5 entitled, "Integration: Actions by States," by John N. Popham, Special to The New York Times, Little Rock, Arkansas, September 7, offered as Plaintiff's Exhibit No. 182 for identification and excluded by the Court.)

Mr. Nachman: Exhibit No. 183 for identification is again a story by John N. Popham—

Mr. Loeb: That is datelined in Chattanooga, Tennessee.

The Court: What is that number?

Mr. Nachman: Plaintiff's Exhibit No. 183, Your Honor.

The Court: Let me see it. This appears to be more of an historical document than anything else. Let me exclude it and give you an exception.

(Newspaper article, The New York Times, dated December 1, 1957, entitled "The Southern Negro: Change and Paradox," by John N. Popham, Chattanooga, offered in evidence as Plaintiff's Exhibit No. 183 and disallowed and excluded by the Court.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, I show you Plaintiff's Exhibit No. 184 for identification from The New York Times Magazine of December 29th, 1957 entitled, "Report on Montgomery a Year After," by Abel Plenn, Montgomery, Alabama. Will you state who Abel Plenn is?

A. I have no idea.

Mr. Embry: May I ask him a question?

The Court: Go ahead.

[fol. 276] Mr. Embry: Was Mr. Plenn an employee of The New York Times Company or was he on the date of the issuance of this paper?

The Witness: No, sir.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Do you know whether or not The New York Times paid Mr. Plenn for this story?

A. I don't know.

Q. Do you know anything about the circumstances of the publication of that article?

A. No, I don't.

Q. You have nothing to do with the publications that appear in The New York Times Magazine?

A. That's correct.

Q. Do you know who on The New York Times staff does have that knowledge?

A. Yes, sir.

Q. Who?

A. Mr. Webster Martell is in charge of the Sunday Magazine among other things.

Q. He would be the gentleman who would know about any arrangements made with Mr. Plenn for the publication of this story?

A. He or someone in his department, certainly.

Mr. Nachman: If the Court please, we withdraw Plaintiff's Exhibit No. 184 for identification.

(Newspaper article, New York Times, dated December 29, 1957 entitled, "Report on Montgomery a Year After," by Abel Plenn, Montgomery, Alabama, withdrawn by counsel for the Plaintiff.)

[fol. 277] Cross examination. (Continued)

By Mr. M. R. Nachman, Jr.:

Q. You probably testified about this yesterday, Mr. Faber, but so that we can get started in context would you state again to the Court what the designation "Special to The New York Times" without a byline but with a dateline from a city within Alabama would indicate?

A. A Special would mean that it was not a wire story and that some effort was made by The New York Times to obtain the information in that story.

Q. Am I correct in stating that the Special story would

come either from a stringer or from a staff correspondent even though the staff correspondent's name does not appear there?

A. Well, there would be another possibility too.

Q. What would that be, sir?

A. That would be that someone in New York had made a telephone call to gain information in another city and they had therefore used it.

Q. But if it obtained the dateline, if I am using the correct word, of a city in Alabama, it would indicate that the news gathering activities that went into this story had occurred there, would it not?

A. Not necessarily.

Q. Would you explain yourself, sir?

A. Well, in certain incidents, we receive letters or press releases from a city containing information and we verify that by phone from New York.

Q. Well, let me put it this way. This is the designation that you give to stories that are sent in by stringers which you publish.

A. Yes, sir.

Q. And it is the designation that you give stories that are sent in by staff correspondents that you publish although you don't publish their names.

A. Yes, sir.

Q. And it does not include any wire service stories.

A. No, sir. It does not.

[fol. 278] Mr. Nachman: Your Honor, with that general predicate, we have again with counsel for the other side culled out six rolls of Special stories which will go in under their general objection which counsel has made and then they may have some other special objections they may want to make.

Mr. Embry: Well, if it please the Court, our general objection is already in the Record in respect to the same type of document—

The Court: Yes.

Mr. Embry: We want to add to that general objection an objection on the grounds that it is not shown by the testimony elicited from the witness that the appearance of

the slug or byline "Special to The New York Times" indicates or sheds any light or has any purpose or any probative value or force or effect as to whether the corporation or its employees, agents or servants was carrying on activity in connection with news gathering either at the time of the service of process on the defendant in this cause on April, 1960 or at the time of the dateline of any such articles or news stories that appeared in the paper. It is not shown by those items of evidence sought to be introduced by counsel by these documents which I assume counsel for the plaintiff will number nor that any activities of the corporation were carried on in connection with the gathering of the news contained in that series of articles and in support of that ground of objection, Your Honor, I would like to ask Mr. Faber one question.

The Court: Go ahead.

Mr. Embry: Are there a number of other occasions, Mr. Faber, when the caption "Special to the New York Times" appears on the byline or dateline of an article or news item in The New York Times newspaper when you have received that article or news item from a source not connected with in anywise with respect to employment or contract or purchase but where an item is sent to you gratuitously either from an individual, a corporation or a press agent—do you also have items of that kind which contain "Special to The New York Times"?

[fol. 279] Mr. Baker: We object to the leading, if the Court please.

The Court: I will let it in and give you an exception.

The Witness: Yes, sir.

Mr. Embry: Those are the additional general grounds, Your Honor, under the general objection heretofore made to the whole line of documents.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. In the newspaper parlance, Mr. Faber, what is the purpose of putting a dateline on a Special story? What is that dateline designed to show?

The Court: Now, does the dateline include the city or is it just the date?

Mr. Nachman: By the dateline, I mean the city and the date, Your Honor.

The Court: All right. Go ahead.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. What is that designed to show, Mr. Faber?

A. That something happened in that city on that date.

Q. Is it designed to show anything in connection with the news gathering?

A. Well, which term are you using now?

Q. The dateline.

A. The dateline?

Q. Yes.

A. No.

Q. For example, Montgomery, Alabama, July 26th, with a Special to The New York Times. What would the words, Montgomery, Alabama, July 26th indicate?

A. That would indicate that something newsworthy happened in that city on that date.

Q. And it gives no indication of the fact that there was any news gathering actvities that went into that story that [fol. 280] took place there in that city?

A. The dateline?

Q. Yes.

A. No.

Q. And the "Special?" That doesn't indicate that either?

A. The "Special" indicates the Times made some special effort to get news from that city on that date.

Q. All right, sir. That's what I am getting at.

Mr. Nachman: With that predicate, Your Honor, we offer these in evidence.

Mr. Embry: If the Court please, now that he has offered them into evidence, I wish to say that it does not indicate by what means they were made, whether they were made by an employee of The Times or whether by purchase by some other person operating as an independent contractor or buying them in some other way. Was there any indication along that line, Mr. Faber?

The Witness: No, sir.

Mr. Embry: All right. We renew our objections, Your Honor. Let me ask you this, Mr. Faber. It didn't indicate whether it might be the result of an inquiry from your office by telephone from New York to the person that sent the item of news in—it doesn't indicate that it was done by any one of those means, does it?

The Witness: That's correct.

The Court: How do you connect these "Specials" up with news gathering activities in Alabama, Mr. Nachman?

Mr. Nachman: Your Honor, in terms of what Mr. Faber just said that they indicate a special effort by The New York Times to get news that occurred in these places in Alabama and that they include stories sent in by staff correspondents and by string correspondents situated in those places.

The Court: Well, I will let them in subject to all legal objections.

Mr. Embry: We except.

[fol. 281] (Six Rolls of newspaper articles, The New York Times, offered and received in evidence and identified as Special No. 1, Plaintiff's Exhibits 185 through and including 197; Special No. 2, Plaintiff's Exhibits 198 through and including 200; Special No. 3, Plaintiff's Exhibits 201 through and including 214; Special No. 4, Plaintiff's Exhibits 215 through and including 220; Special No. 5, Plaintiff's Exhibits 221 through and including 228; Special No. 6, Plaintiff's Exhibits 229 through and including 232.)

Mr. Embry: May I ask the witness one more question, Your Honor, on Voir Dire in connection with these same objections?

The Court: Yes. Go ahead.

Mr. Embry: Mr. Faber, is it true or not that if a Special story is sent in by a staff correspondent, one of your employees, that his name would appear on that story?

The Witness: Not all the time. No, sir.

Mr. Nachman: Your Honor, we now have some additional "Specials" to which counsel may want to add some additional objections. We have one "Special" here relating to weddings.

The Court: Relating to what?

Mr. Nachman: Relating to prospective weddings to take place in Alabama, Your Honor.

Mr. Embry: When this last group of exhibits was handed to the Court Reporter, is he going to know what they are and number them consecutively?

Mr. Nachman: I assume so. Each one is marked Special 1 through Special 6 and the Court Reporter can identify them when he can get to it.

The Court: All right. Go ahead.

Mr. Nachman: Now, Your Honor, these items that I am offering into evidence are captioned the same as the others, [fol. 282] "Special to The New York Times" with a city in Alabama and the date but they relate to weddings.

The Court: Weddings?

Mr. Nachman: Yes, sir. Weddings. They are announcements of weddings or announcements of engagements and I believe that counsel has additional objections or questions that they want to ask about those.

Mr. Embry: Your Honor, we have some very, very special objections about those. We want to ask Mr. Faber some questions on Voir Dire about these.

The Court: Go ahead.

By Mr. T. Eric Embry:

Q. Mr. Faber, you have previously seen these prospective exhibits in the Jury Room that Mr. Nachman is about to offer into evidence, these items from the Society Section of The New York Times newspaper covering a period of dates embraced within the years 1956, 1957, 1958, 1959 and 1960. Is that right, sir?

A. Yes, sir.

Q. With reference to each of those which pertain to wedding announcements or announcements of engagements or announcements of intention of various parties to marry, can you tell His Honor by what means those are gathered, if I may use that term, by what means are those news items of society and social interest gathered or placed in the hands of the New York Times for publication by The New York Times?

A. The wording and the marriage announcements nor-

mally come into The Times by mail from the parties concerned.

The Court: The fathers and mothers of the brides and grooms?

The Witness: That's right, Your Honor. From the fathers and mothers of the prospective brides and grooms and usually with a letter requesting publication.

[fol. 283] By Mr. T. Eric Embry: (Continuing)

Q. State to the Court whether or not you solicit by any means whether by employee or independent contractor or any other means as a result of your own initiative or whether you solicit social items or social news from the State of Alabama or did you within the period of the years that I specified from 1956 through 1960?

A. No. We did not.

The Court: Let me see some of those wedding exhibits.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, do you on occasion pay string correspondents for this kind of wedding announcement that is sent in as a Special to The New York Times?

A. If we had asked for it, I suppose we would have paid for it.

Q. Well, suppose he sent one in without your asking for it and you published it. Would you pay him for it then?

A. From a stringer?

Q. Yes.

A. Yes, we would.

Q. Does that happen on occasion with wedding announcements? Has that happened with that category of stories that I have been referring to?

A. Well, it never happened in the State of Alabama.

Mr. Embry: Your Honor, we renew our objections with particular reference to—

The Court: All of these refer to nuptials?

Mr. Embry: That's right, Your Honor. They shed no light on the issues involved in this case—

Mr. Nachman: Well, we withdraw that if the Court please.

(Plaintiff's Exhibits 233, 234, 235 and 236 pertaining to wedding announcements and engagements withdrawn by counsel for the Plaintiff.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, I show you two documents identified [fol. 284] as Plaintiff's Exhibit No. 233 and Plaintiff's Exhibit No. 234 as the other exhibits so numbered have been withdrawn and this one purports to be a New York Times magazine story of April 3rd, 1960 with an Atlanta dateline entitled "A Southern View of the South," by Harold Flemming. Do you have any knowledge as to who Mr. Flemming is?

A. No, sir.

Q. Do you have any knowledge of any arrangements which were made by The New York Times for the publication of that story?

A. No, sir.

Mr. Nachman: We will withdraw this, if the Court please.

(Plaintiff's Exhibit No. 233 for identification entitled "A Southern View of the South" dated April, 1960, Magazine Section of The New York Times, by Harold Flemming, withdrawn by counsel for the Plaintiff.)

Mr. Nachman: I withdraw Plaintiff's Exhibit No. 234 for identification.

(Plaintiff's Exhibit No. 234 for identification withdrawn by counsel for the Plaintiff.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, I now show you a document identified as Plaintiff's Exhibit No. 235 for identification from The New York Times, Sunday, April 10th, 1960, from the New York Times Magazine Section, entitled "Gardens along the Gulf Depict Another Era," Mobile, Alabama, and it contains

no date and no byline. Would you explain to the Court what the absence of the byline and dateline means and what that story indicates, if anything, in regard to news gathering activity in Alabama?

A. Well, without the date we have no idea as to when it was written and I cannot tell from the article itself whether it was written in Mobile and I see two initials "M. F." on the bottom of it but I cannot tell whether it was written in Alabama or anywhere else.

Q. Do you know what arrangements, if any, are made [fol. 285] with reference to stories like that by The Times?

A. No, sir.

Q. Do you know whether any payment was made for this article?

A. No, I do not.

Q. It does appear in an edition of The New York Times, though?

A. Yes, sir.

Mr. Nachman: Your Honor, this article is entirely related to gardens in Mobile. The article consists of five columns with photographs and certainly the contents of the are article are entirely devoted to circumstances and places located in Alabama. We offer it in evidence on that basis.

The Court: What is your theory about this?

Mr. Nachman: Well, it is published as news by the newspaper and it obviously relates to Alabama and it shows on its face that it necessitated the gathering of news by someone about Alabama and that it was published in The New York Times.

Mr. Embry: May I call Your Honor's attention to our previous objections to this sort of thing. I would like to draw an analogy if I may. That type of article and under the testimony of the witness of this specific exhibit, No. 235, to draw an inference or to suppose that that had any evidential value about news gathering activities in the State of Alabama by this defendant corporation would be akin to drawing the inference that I had been in Manila in the Philippine Islands. On this week if an article by me appeared in a periodical this week which may have well been drawn from my recollection and from my obser-

vation and readings of other periodicals or perhaps even drawn purely on my imagination. There is absolutely nothing in that article and there is no evidence before Your Honor to even present a scintilla which would entitle any person or the Court to draw the inference from the contents or from the format of it or the fact that it appeared in the newspaper that it has any evidential value as to whether this corporate defendant did anything in connection with it in Alabama. There is just a complete absence of evidence in that sort of thing, Your Honor. I could write a book today, and many people do as a matter [fol. 286] of fact, and cast it in the present tense and purport to give opinions and ideas about we will say a political situation in Indo-China but it may have been drawn from the reading of newspapers or articles or a treatise or essays by other authors and then collected together and presented as—

The Court: I believe that Mr. Sabatini, a great Spanish novelist, wrote a book called "The Carolinian" and it was so perfect that everybody thought he lived in North Carolina but he never had been over here. Mr. Henry wrote a great book called "With Lee in Virginia," and he had never been out of London.

Mr. Embry: That's the very sort of thing I am talking about, Your Honor. I have a book in my possession right now which is a transcript of the trial of the proceedings of the defense of the first mate of the privateer Savannah which was captured in 1861 and of which the founder of this law firm of which Mr. Loeb is a member, Mr. Lord—defended that first mate—

The Court: Mr. Loeb was not a member of the crew that—

Mr. Embry: Not at that time, Your Honor. However, the founder of his firm defended that mate, you see. Now, to draw the inference from that that Mr. Loeb or Mr. Lord had something to do with the outfitting of the privateer or the launching of the vessel or the putting of it on the high seas as a privateer, would be just as absurd as to draw the inference from this article that The New York Times Company was doing business in the State of Alabama. It

just cannot be done, Your Honor, according to human logic and reason.

The Court: It shocks your ideas of the rules of evidence, does it?

Mr. Embry: It most certainly does, Your Honor.

Mr. Nachman: Well, Your Honor, we can go far afield now and talk about the Philippines and privateers on the high seas and so forth—

The Court: Well, he was just using those references as an illustration. Go ahead.

[fol. 287] Mr. Nachman: This article, in its entirety, deals with the gardens in Mobile and it describes the events in detail and a picture was taken of it and maybe Mr. Embry can take a picture of the Philippines from Montgomery, Alabama. I don't know. However, this article contains a picture of Mobile—

The Court: Well, you can buy a picture postcard down there—

Mr. Nachman: Yes, Your Honor, but we say that—

The Court: Well, I don't think it comes within the scintilla rule. Let me exclude it.

(Plaintiff's Exhibit No. 235 offered in evidence but disallowed and excluded by the Court.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. Faber, the next exhibit I show you is identified as Plaintiff's Exhibit No. 236 for identification and appears on page 76 of the Sunday, January 6th, 1957 New York Times and I call your attention to an article entitled "University Integration Scene," datelined Tuscaloosa, Alabama, January 5th. There is no indication of "Special to The New York Times." Would you explain the circumstances of that insofar as you may know the circumstances?

A. Well, from looking at the exhibit there is no line "Special to The New York Times" nor is there any indication that it is an A.P. or a U.P. story. I cannot tell from the article whether we omitted the "Special" or the A.P. or U.P.

Q. But you do know that something was omitted.

A. Apparently so. Yes, sir.

Q. And you testify that this was either a Special or a U.P. or A.P. story.)

A. Or a wire service story.

Q. I understand that it could have been a wire story.

A. Yes, sir.

Q. But it could have been a "Special".

[fol. 288] A. It could have been. Yes, sir.

Mr. Nachman: We offer this in evidence on the same theory as we offered the other Specials, if the Court please.

The Court: Well, "could have been" is quite a vague term, isn't it.

Mr. Nachman: Well, Mr. Faber indicated that there should have been something else there.

The Court: Well, let me exclude this.

(Plaintiff's Exhibit No. 236 offered in evidence and disallowed and excluded from the Record by the Court.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, I show you Plaintiff's Exhibit No. 237 for identification from The New York Times, Friday, January 11th, 1957 at page 37 and I call your attention to the article entitled, "Other Banks", Birmingham, Alabama, Special to The New York Times, January 10th. I will ask you if that story is in any different category than the "Specials" about which you testified earlier?

A. No, sir.

Mr. Nachman: We offer it in evidence, if the Court please.

Mr. Embry: Mr. Faber, do financial specials ever emanate otherwise than from stringers and/or staff correspondents?

The Witness: Yes, sir.

Mr. Embry: From what other sources would you get special financial items of news?

The Witness: Well, we would get them from the houses in New York or mostly from their publicity representatives.

Mr. Embry: Who are not in Alabama.

The Witness: Not in Alabama. That's right.

Mr. Embry: Would that tell you whether this came from that particular source—that particular one or are you able to determine or not where it came from?

[fol. 289] The Witness: This one, I think I can determine came from Birmingham.

Mr. Nachman: We offer it, Your Honor.

The Court: I will let that one in then.

Mr. Embry: We except.

(Newspaper article, The New York Times, Friday, January 11, 1957 at page 37 entitled "Other Banks" Birmingham, Alabama, Special to the New York Times, Birmingham, Alabama, dated January 10, offered and received in evidence and identified as Plaintiff's Exhibit No. 237.)

Mr. Nachman: The next exhibit that we propose to offer, Your Honor, is again one without any wire service attribution or without any special designation and I assume that Your Honor will rule the same and we will withdraw No. 238.

(Plaintiff's Exhibit No. 238 for identification withdrawn by counsel for the Plaintiff.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, I am now showing you Plaintiff's Exhibit No. 239 for identification which is page 43 of The New York Times, Thursday, January 12th, 1956 issue and I call your attention to the article entitled, "Mobile, Alabama," Special to The New York Times, Mobile, Alabama, January 11th. This story relates to a Board of Directors meeting of The American National Bank and Trust Company of Mobile. Again, I ask you whether that Special is in any different category from the other Specials about which you have testified previously?

A. No, sir.

By Mr. T. Eric Embry: (Continuing)

Q. Mr. Faber, do you have a phrase you use in the news-
[fol. 290] paper world called a "round-up"?

A. Yes, sir.

Q. What is a round-up?

A. Well, that's where we gather information from many sources and put it together in one story.

Q. Is the type of thing you are looking at in this exhibit which is generally headed, "Many Banks Elect Officers at Meetings," a series of short news items contained on most of that page? Is that what you term as a round-up?

A. It is one type of a round-up.

Q. One type of round-up.

A. Yes, sir.

Q. May I ask you if it is true or whether or not often times as to these type round-ups you are looking at in that exhibit, items of news are sent direct to you from the institution or direct to you from a bank?

A. Yes, sir.

Q. As a news item.

A. Sometimes. Yes, sir.

Q. It would still, would it not, I will ask you whether this is true—it would still have a line on it "Special to the New York Times."

A. Not in this particular case.

Q. It would not?

A. No, sir. There are some here that have no Special on them from out of town banks.

Q. Well, does that differentiate between the ones that do have that line on them and those that do not?

A. Yes, sir. There is a difference.

Q. What is your differentiation on that point?

A. Well, these presumably came from the press agent of the banks directly into New York and these others came from the cities in question.

Q. From stringers?

A. From stringers in this case.

Q. Was that procured in any other fashion from a [fol. 291] stringer than any other item that you have testified to about as having been procured from a stringer by either request from you and payment for the item or offered to you and accepted by you in New York and in payment for the item?

A. The same circumstances.

Mr. Nachman: We offer it in evidence, if the Court please.

The Court: I think that would be admissible.
Mr. Embry: We accept.

(Newspaper article, The New York Times, Thursday, January 12, 1956 at page 43 entitled "Mobile, Alabama," Special to The New York Times, Mobile, Alabama, January 11, offered and received in evidence and identified as Plaintiff's Exhibit No. 239.)

Cross examination. (Continued)

By Mr. M. R. Nachman, Jr.:

Q. Mr. Faber, are all New York Times stories copyrighted?
A. Not individually.
Q. Are they copyrighted by The New York Times Company as a corporation?
A. The whole issue is copyrighted.
Q. And that means what, Mr. Faber?
A. That it is registered with the Copyright Bureau in Washington.
Q. It means that the story cannot be used by anyone else, doesn't it?

Mr. Embry: We object to that, if the Court please. That's a question of law.
The Court: Yes. I think the Federal Law would cover that.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Is the stringer system, as you described it in your [fol. 292] testimony, an innovation of The New York Times?
A. It was there when I came there.
Q. Well, I mean, is it peculiar to The New York Times Company?
A. Well, I have only worked for The New York Times.
Q. You have been in the newspaper business for a good many years, haven't you, Mr. Faber?
A. Yes, sir.
Q. For how many years?
A. For twenty years.

Q. Well, then, based on your twenty years experience in the newspaper business, would you state whether the stringer system is peculiar to The New York Times or not?

A. It is not.

Q. It is not?

A. No.

Q. Is it generally used by all newspapers?

A. Yes, sir.

Q. All newspapers in all States have stringers?

A. I don't know about all, but it is generally used by the newspapers around the country.

Q. How many other New York newspapers have stringers?

A. I can't say. I just don't know.

Q. Does The New York Herald Tribune have stringers?

A. I don't—

Mr. Embry: If the Court please, we object to what other newspapers may or may not do. I don't think that is involved in the question being presented to this Court for its decision.

The Court: Let's stick to The New York Times.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, perhaps you may not be able to tell us about this and if not, I will withdraw the question. Can you tell the Court anything about how The New York Times distributes its newspapers in Alabama?

A. No, sir.

[fol. 293] Q. You know nothing about that?

A. No, sir.

Q. Do you have any knowledge of the circulation figures of the New York Times?

A. In Alabama?

Q. In Alabama?

A. No, sir.

Q. Do you know anything about how the New York Times Index is sold in the State of Alabama?

A. No, sir.

Q. Do you know anything about how the micro-film edition of The New York Times is sold in Alabama?

A. No, sir.

Q. Who would be the person in charge of The New York Times Index, that is, the person in The New York Times organization?

Mr. Embry: We object to that, Your Honor. He just said he didn't know anything about it.

Mr. Nachman: Well, if he doesn't know, all he has to do is say so.

The Witness: I don't know the name of the person.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Would the same be true about the micro-film edition?

A. Yes, sir.

Q. All right, sir. That's all.

Redirect examination.

By Mr. T. Eric Embry:

Q. Mr. Faber, you have in your testimony from time to time referred to the Associated Press and the United Press. They were referred to in terms of the A.P. and the U.P. Now, by those terms, do you mean the Associated Press and the United Press respectively?

A. Yes, sir. I think, however, it is the U.P.I. now. It is [fol. 294] the United Press International now.

Q. Are those what you have termed previously wire services?

A. Yes, sir.

Q. I believe on cross-examination you testified that from time to time the New York Times Company obtains from the wire services and by that I assume you referred to the A.P. and U.P. as you have previously testified, items of news. Is that correct?

A. Yes, sir.

Q. By what mechanical means and at what place does The New York Times Company receive from the Associated Press and the United Press the wire service items of news from time to time, and more specifically, during the times we have delineated in this testimony from the 1st day of January 1956 through April of 1960? Where are the news

items received and by what physical and mechanical means are they received?

A. They are received by teletype machines. There are numerous teletype machines in the news room of The New York Times.

Q. By that do I understand your answer to be that you get the printed word from some sort of mechanical device in your plant in New York City?

A. Yes, sir.

Q. Do you know where the other end of the wire is that feeds the machine out of which you get the printed word?

A. Yes, sir.

Q. Where is it located?

A. In New York City.

Q. During the period of time I have delineated from the 1st day of January, 1956 through April of 1960 do and have employees of The New York Times gone out into the field we will call it to the various States including Alabama and furnished news to the Associated Press and United Press which is in turn given back to you? Is that right?

A. New York Times staff people?

Q. Yes, sir.

A. No, sir.

Q. You have testified that you do not know the amount of payment that is made by The New York Times Company to [fol. 295] these wire services. Is that correct?

A. Yes, sir.

Q. Do you know, as a matter of fact, that payment is made?

A. Yes, sir.

Q. Are there any employees of the Associated Press or the United Press that are employees and engaged in work or service for The New York Times Company in the State of Alabama during this period I have referred to?

A. No, sir.

Q. Now, this may have been covered piece-meal in my questioning of you on Voir Dire with respect to certain documents but I will ask you a general question to cover and to embrace all of those particular questions that I previously put to you. I will ask you whether or not it is true that the byline or the designation appearing at the

head of an article quote "Special to the New York Times" unquote, may or may not embrace among it the following sources of news items which are printed in The New York Times newspaper—I used the wrong phrase. That's not a byline—that's a slug. Is that right?

A. Yes, sir.

Q. A slug "Special to The New York Times."

A. Yes, sir.

Q. Now, that news item may, if I understand your testimony, emanate, and we will assume that all of these have Alabama slugs and dateline—

Mr. Baker: We object to the leading, if the Court please.

Mr. Embry: Well, Your Honor, I—

The Court: I will let it in. Go ahead.

By Mr. T. Eric Embry: (Continuing)

Q. Do you recall my question insofar as I have stated it up to this moment?

A. Yes. You were going on and summarizing things.

Q. All right. Now, assuming all that I am hypothesizing have datelines in Alabama, state whether or not these can come from either a staff correspondent, a stringer, directly from a source of news, if it is an institution or an indi-
[fol. 296] vidual such as we have discussed with respect to wedding items, or from press agents of those concerned with the subject matter of the news story?

A. Yes, sir.

Q. Now, does that embrace all of the means by which "Special to The New York Times" could emanate?

A. I think there is one further category and that is when we make phone calls down to Alabama and gather news by reporters in New York.

Q. All right. Now, I will ask you to tell His Honor whether or not from the fact of the slug "Special to The New York Times" you can determine accurately whether a staff correspondent has been present at that place and active in gathering that news or not?

A. You cannot do that from the slug alone.

Q. Now, I show you Plaintiff's Exhibit No. 62 which has been identified by your testimony as being a stringer's card

which we have here in blank. Now, on the top printed line of that card, Plaintiff's Exhibit No. 62, there appears the word "City" opposite of which appears the word "State" printed. What information is placed in those two spaces opposite the word "City" and the word "State" by you when you are putting the data relative to stringers that you testified to on the card?

A. Well, I don't put anything on the card.

Q. You do not?

A. No, sir.

Q. Well, what information is placed on the card by the stringer, assuming that it's the stringer that puts it on there?

A. The City in which he is working and the State in which he is working.

Q. The name, of course, is self-explanatory and the age is self-explanatory. Now, "Newspaper with which connected." There are two other words printed "Morning" and "Evening." Tell us what information is placed in those blanks like the stringer? What information is placed there whether it is The New York Times Company or some other newspaper?

A. Well, this is the newspapet for which he is working [fol. 297] and the City and State which he is working which is listed above it.

Q. That is, his employer?

A. His employer. Yes, sir.

Q. Now, referring to the caption "Position on Paper". What information is put there by the stringer?

A. Well, information about the job on which he is working for the paper as to whether he is a reporter, editor or whatever else it might be.

Q. In the City in which he resides and is working?

A. Yes, sir.

Q. Appearing below that is "Residence Address" and "Office Address". That is self-explanatory. Now, we have a line below that entitled "Days Off." Also the caption "Working Hours." What information is placed in those two places by the stringer in submitting this card to you?

A. The days he does not work for the newspaper for which he is working full time and the hours of those days for which he works for that same newspaper.

Q. Now, to more specifically designate it, let's take Mr. McKee. Would the information on his card show the days that he was not on duty at The Montgomery Advertiser?

A. Yes, sir.

Q. And his working hours at The Montgomery Advertiser?

A. Yes, sir.

Q. Now, I show you Plaintiff's Exhibit No. 1 which is a brown envelope with the following caption in type "Don McKee, Montgomery Advertiser, Montgomery, Alabama." That is the heading on the envelope. Now, I notice there are some headings of correspondence in print and some figures and on this particular exhibit the figure is "98" and the sum in pencil is "$50" and at the bottom of the column wherein the sum $50 is is the sum "50 H.F." Now, is this exhibit that you are looking at now, Plaintiff's Exhibit No. 1, does the sum "50", "Harold Faber," represent anything to you?

A. That's my authorization to pay him $50 for a preceding month.

[fol. 298] Q. All right. For what? Does anything on that envelope indicate why that payment was made to him?

A. No, sir.

Q. What does the figure "98" mean?

A. I assume that is some auditing department figure.

Q. Now, was this sum of $50 which you remitted to him for April of 1960 a payment to him for news items sold to you by him?

A. Yes, sir.

Q. And was the basic method employed to compute the amount you paid to him for those news items according to the $10 per column or 1¢ per word rate that you had agreed to pay him for that in the event that you bought it from him and, in fact, in that instance, did buy it from him?

A. That was the basic theory, yes.

Q. Now, I want to ask you whether or not you paid any regular compensation to Don McKee by way of a weekly or monthly payroll check or have you done so at any time since he has been what you term as a stringer for The New York Times?

A. No, sir.

Q. Have all of the payments you made to him been on the basis you testified to with respect to the amount for the article of news sold to you by him or the item of information sold to you by him?

A. Yes, sir.

Q. Has that been true for the entire period that he has been a stringer for The New York Times?

A. Yes, sir.

Q. I ask you the same question with respect to Mr. Chadwick and I exhibit Plaintiff's Exhibit No. 4 to you of January, 1960? Was that envelope reflecting the figures of $5 with the initials "H.F."—is that representative of the same method of payment and the same manner of handling the transaction as you just testified to about Don McKee?

A. Yes, sir.

Q. Has that been true with respect to Mr. Chadwick at all times since he has been a stringer for The New York Times?

A. Yes, sir.

[fol. 299] Q. Now, do these exhibits one, two, four and five—I will separate them according to the names, Chadwick and McKee—exhibits two, four and five relating to Mr. Chadwick which purport on their face to be for the months of January, March and April, represent the total sum of money paid by you to Chadwick for the news items furnished to you by him for that period of time in 1960?

A. Yes, sir.

Q. And in the case of Mr. Chadwick as reflected by the exhibits representing a total sum of $135.

A. Yes, sir.

Q. And in the case of Mr. McKee by one exhibit in April, 1960, representing the total payment by you to him in the amount of $50 during the year 1960.

A. Yes, sir.

Mr. Nachman: I didn't quite understand that. Mr. Embry you say that envelope covers the year 1960? I think it covers the month of April, 1960.

Mr. Embry: No, I said the total amount paid but I made an error.

By Mr. T. Eric Embry: (Continuing)

Q. In respect to Mr. McKee there are also exhibits 6 and 7 introduced by the Plaintiff, adding a total of $40 to the $50 you have testified about, being payments made in February and March in addition to the payment made in April. Is that correct, sir?

A. Yes, sir. That's right. Those seem to be the complete figures for 1960.

Q. And that's the total sum of money paid to each of these gentlemen during the year.

A. Yes, sir.

Mr. Embry: Your Honor, it may be that we could save time on an overall basis if I might have a moment to confer with Mr. Faber in order to decide—

The Court: Well, I know you can't do it in a minute [fol. 300] and so the Court will recess for ten minutes. Court is recessed for ten minutes.

(Court recessed for ten minutes.)

Redirect examination. (Continued)

By Mr. T. Eric Embry:

Q. Mr. Faber, you have testified that The New York Times Company has approximately 250 staff correspondents and in your testimony in that regard you went into the details with respect to how many of those had ever been into the State of Alabama. We will get back to that point later. Now, I believe I failed to ask you and I want to ask you now how many stringers or string correspondents does The New York Times Company purchase news items from or do business with nationally?

A. Between 250 and 300.

Q. Now, of those 250 to 300 stringers is it your testimony that at no one time during the period from the 1st of January, 1956 through April of 1960 have there ever been more than three such stringers in the State of Alabama?

A. Yes, sir.

Q. Now, you were asked on cross examination by Mr. Nachman something with reference to the payment of Don

McKee or the authorization of payment to Don McKee during April or for April, 1960 and to Mr. Chadwick for April, 1960—the payment of each a sum of money in connection with the assignment by you of Harrison Salisbury to go throughout certain parts of the South including the State of Alabama, was the payment by you authorized to be made to Mr. McKee and Mr. Chadwick on the occasion you testified about for information furnished to Mr. Salisbury by those two individuals?

A. Yes, sir.

Mr. Baker: We object to the leading, if the Court please.

The Court: Well, I will let it in temporarily. Go ahead.

[fol. 301] Mr. Nachman: If I recall Mr. Faber's testimony, it was that he had told Mr. Salisbury that he could call on these stringers in Alabama and had given their names to Mr. Salisbury. I don't recall his testimony about what the payment was for in any greater degree than that and I think I recall correctly that Mr. Faber expressed some ignorance about the details of the service that these stringers had performed for Mr. Salisbury and we object to the question—

The Court: The Record will show what he testified about.

Mr. Nachman: But, Your Honor, the leading question accomplished matters that were not in Mr. Faber's testimony on cross examination—

Mr. Embry: Well, certainly. That's why I want to clarify it.

The Court: Well, you can re-clarify on cross examination. Go ahead.

By Mr. T. Eric Embry: (Continuing)

Q. Was the memo presented to you for approval or authorization—tell the Court whether or not it was presented to you for approval or authorization for payment to those individuals for information furnished to Mr. Salisbury?

A. I sent a memo up to them—up to the auditing department for payment to Mr. Salisbury. That was for information provided to Mr. Salisbury.

Q. Now, the stringer card which was a blank form identified as Plaintiff's Exhibit No. 62, I believe, although I

can't find it, you have testified about the data that was placed upon that exhibit by the stringers at the time it was forwarded to you in New York. Now, tell His Honor, if you will, what was the occasion for you having them put the data on the card and having them send it to you? What was the occasion for that?

A. Well, when we get a new stringer we have them fill out this information on the card so that we can make a card index so that we may refer to it and find his phone number and know whether he is working or not on any day that we want to get something from him.

[fol. 302] Q. All right. Now, Mr. Faber, during this same period of time from the 1st of January, 1956 through April, 1960, have you ever on any occasion with respect to these individual stringers you have testified about in the State of Alabama, have you ever sent that data or the card containing that data of those particular stringers to your personnel department for the purpose of that department entering them or placing them on The New York Times Company payroll?

A. No, sir.

Q. Now, you testified that you made assignments and that that was part of your duties and you did, in fact, make assignments of the individuals that you call staff men or staff correspondents. That's correct, isn't it?

A. That's correct.

Q. You testified that you did that during each of those years from the 1st of January, 1956 through April, 1960?

A. Yes, sir.

Q. Now, how many staff men or staff correspondents did you assign to cover any news events in the State of Alabama in 1960?

A. Two.

Q. Who were those staff men that you so assigned to cover news events in the State of Alabama in 1960?

A. Mr. Sitton and Mr. Salisbury.

Q. On what occasion did you assign Mr. Sitton to cover news events in the State of Alabama in 1960?

A. There were three specific events but I don't recall the exact dates.

Q. Well, if you have a memorandum there that you prepared for the purpose of refreshing your recollection about it, I will ask you to refer to that memorandum.

A. I have one here.

Q. Now, after having refreshed your recollection by referring to it and based upon your recollection and reference to that memorandum, I will ask you to state to His Honor—

Mr. Baker: Where did the memorandum come from, if the Court please?

[fol. 303] The Court: Did you make that memorandum yourself?

The Witness: No, sir, but it was made under my supervision.

The Court: It was made under your supervision?

The Witness: Yes, sir.

The Court: Do you know the facts contained therein to be true and accurate?

The Witness: Yes, sir.

The Court: Well, as I understand the rule about this memorandum business, if the witness says that he cannot recall all of these things but I have a memorandum that is true and correct, then you allow him to read from that memorandum and then his testimony and the memorandum both become evidence. Isn't that correct?

Mr. Embry: That's correct, sir.

The Court: Yes. I think that's correct law.

By Mr. T. Eric Embry: (Continuing)

Q. Now, you mentioned Mr. Sitton. Let's start with him first. On what occasion did you assign him to cover news events in Alabama in 1960?

A. In late January, 1960, he covered a speech by Mr. Symington that took place in Alabama.

Q. Did you make that assignment?

A. Yes, sir. I did.

Q. How long was he in the State of Alabama on that occasion for that purpose?

A. One day.

Q. Now, you indicated that there was another occasion. On what other occasion did you assign him to cover a news event occurring in the State of Alabama?

A. In March of 1960, he came here to cover a story captioned "One Hundred Negroes March in Alabama."

Q. That was in the City of Montgomery, Alabama?

A. Yes.

Q. How long was he in this City on that occasion?

[fol. 304] A. One day.

Mr. Baker: If the Court please, we object to his testifying how long Mr. Sitton was here. He wasn't here himself to—

Mr. Embry: Was that the assignment you gave him to be here for that length of time?

The Witness: Well, the way it happened, Mr. Sitton called me and asked me, can I leave now, and I said, yes, you can leave.

The Court: I will let it in and give you an exception. Go ahead.

By Mr. T. Eric Embry: (Continuing)

Q. Now, Mr. Faber, you said that Mr. Salisbury was assigned by you to cover news events in several of the States and included among those was the occasion when he in fact covered something in Alabama. On what occasion did you assign him to go to places which included Alabama?

A. Beginning in April there was a specific assignment to cover a religious service—

Q. Let me interrupt you. Was that according to the memorandum that you were questioned about on cross examination that outlined what he was to do and where he was to go?

A. Yes, sir.

Q. This wasn't an exhibit I don't believe, but it was referred to in your testimony on cross examination when Mr. Nachman read to you the contents of such memorandum and you said that that was correct.

A. Yes, sir.

Q. Now, go ahead and I will not interrupt you again.

A. The question was—

Q. I had asked you, I believe, did you make the assignment and you said, yes. I then asked you on what occasions you assigned him here.

A. In the beginning of April he went down to Andalusia to cover a religious service and later in the early part of that month he went to Montgomery and Birmingham.

Q. For what period of time did he stay in the State of Alabama on that occasion under your assignment as his superior and after your having given him that assignment?

[fol. 305] A. My recollection is four or five days.

Q. Now, in 1959 did you make any assignments of any staff correspondents to cover news events in the State of Alabama, and if so, who were those individuals that you so assigned?

A. Yes, sir. I assigned—Mr. Russell Porter came down—

Q. First, just give us his name.

A. First, Russell Porter.

Q. Who else?

A. John Wicklein.

Q. Who else?

A. Jack Nevard and Mr. Sitton.

Q. Claude Sitton?

A. Yes, sir. Claude Sitton.

Q. Now, starting with the first name that you mentioned, Russell Porter, I believe, would you tell His Honor on what occasion you assigned him to cover news events in the State of Alabama?

A. There was one occasion in late January where there was a Court hearing or rather a verdict on the Judge Wallace case and he came down specifically to cover the Judge Wallace decision.

Q. How long was he in the State of Alabama on that occasion?

A. My recollection is that he was here for one day.

Q. Were there any other assignments for Russell Porter in 1959?

A. No, sir.

Q. All right. Now, take the next one that you assigned

in 1959, Mr. Wicklein, and tell His Honor on what occasions you assigned him?

A. Mr. Wicklein came down in the early part of July, 1959 and I think he spent two days or so here and he wrote a story about a few white ministers taking a stand on segregation.

Q. Was he here on any other occasion under assignment by you?

A. No, sir.

Q. How about the third one, Jacque Nevard?

A. Jacque Nevard was down here one day in November of 1959 covering the T.V.A. ceremony.

[fol. 306] Q. All right. Mr. Sitton was next.

A. Mr. Sitton was here, I think, on three occasions in 1959. One of those occasions was in early March and there was a story about—I can't recall exactly what the story was about but the headline was captioned "Institute Works to Get Answers." That was during the period of early March of 1959.

Q. All right. You said that he was here on three occasions in 1959?

A. I have three listed here.

Q. How much time did he spend here on those occasions?

A. As I recall it, these were each one day assignments.

Q. Does that cover the year 1959?

A. Yes, sir.

Q. All right. Now, during the year 1958 I will ask you the same question. Did you make staff assignments or assignments of staff correspondents, and if so, whom did you assign to cover news events in Alabama?

A. The only record that I have here is one of Mr. Sitton in Alabama.

Q. Do you have the occasions?

A. Yes, sir. This was the hearing on the Civil Rights Commission in Alabama and he was here, I think, for maybe two days.

Q. During the time—

A. In December, 1958.

Q. Did he come here and stay until they completed the hearings?

A. Yes, sir. I think it was a two day hearing and he covered both days.

Q. There were no others in the year 1958?

A. No, sir.

Q. Now, in 1957—

A. I beg your pardon. Excuse me. There is one more further assignment in 1958. John Popham during the period of time when he was Southern correspondent.

Q. On how many occasions was Mr. Popham assigned by you in 1958?

A. There were two occasions.

Q. All right. Tell us about those two occasions.

A. In January of 1958 there was a Democratic Conven-
[fol. 307] tion—a one day convention that Mr. Popham covered and in April, Mr. Popham covered a medical story in Alabama and again, as I recall it, this was a one day visit in Alabama.

Q. Was the January meeting the meeting of the Democratic Executive Committee in Alabama?

A. I don't know whether it was the Executive Committee or the actual convention itself.

Q. And the other occasion was about a wrist bone graft or some medical event, was it not?

A. Yes, sir.

Q. Those were the two assignments you gave him in 1958 here?

A. Yes, sir.

Q. Sitton and Popham?

A. Yes.

Q. Now, in 1957 did you assign any staff reporters to the State of Alabama?

A. Yes, sir.

Q. Tell us who they were, please, sir.

A. Clarence Dean and George Barrett.

Q. Go ahead.

A. Clarence Dean was here on one occasion, I assume, in 1957. Again, I assume—my recollection is that it was for a period of one or two days and it was a story about the Birmingham Bus Strike there.

Q. Was there another occasion for him?

A. No. Only one occasion for Mr. Dean.

Q. In 1957.

A. Yes, sir.

Q. The other man in 1957 was Mr. George Barrett?

A. Yes, sir. Mr. Barrett.

Q. Where was he assigned, what did he do, and how long was it?

A. Well, Mr. Barrett was here in March of 1957 and wrote the magazine article entitled "Jim Crow, He's Real Tired." I just don't know how many days he took on that assignment.

Q. You don't have any recollection of it?

[fol. 308]. A. No, sir.

Q. Those were the 1957 staff assignments?

A. Yes, sir.

Q. Now, in 1956 there was a number of news events according to your prior testimony occurred in Alabama.

A. Yes, sir.

Q. Did you make several staff assignments or assignments of staff correspondents in 1956?

A. Yes, sir.

Q. Will you tell us first of all who the individuals were that you assigned? Just give us their names first.

A. Clarence Dean, Wayne Phillips, Peter Kihhs, John Popham, George Barrett and Phillip Benjamin.

Q. All right. Tell us about Mr. Dean first. Tell us what assignments and what occasions and how long he was in the State for the purpose of carrying out his assignments.

A. Mr. Dean was in Alabama in December of 1956 for a short time and, again, my recollection is that it was a short assignment for one day and the headline story was "Sniper Fires at Fourth Alabama Bus."

Q. What other occasion was Mr. Dean in Alabama?

A. No other occasion for Mr. Dean.

Q. All right. The next one was Mr. Phillips. What about him?

A. Mr. Phillips was in Alabama in February and March of 1956 continuously from—

Q. What dates inclusive?

A. From about February 8th, 1956 when the first story appeared until March 23rd, 1956 when the last story appeared.

Q. The indication from your answer is that he came to some place in Alabama and remained there until he left on the last date that you mentioned.

A. Yes, sir.

Q. And those dates were about from February 8th through March 23rd. Is that correct?

A. Yes, sir.

[fol. 309] Q. Do you know what place he was in Alabama if it was just one place and if not, tell me if there were more than one.

A. No. He was in several places. He went from Tuscaloosa to Montgomery to Birmingham mainly in a triangular circle.

Q. And he covered the news events in those three cities?

A. Yes, sir.

Q. And Mr. Kihhs—is that spelled K-i-h-h-s?

A. Yes, sir.

Q. Where was he assigned and for what occasions and for how long?

A. Mr. Kihhs was in Alabama on two occasions in 1956. On the first one he was assigned to do a story which appeared in that eight page Special Section and in that same period of time which was a period I recall was about three or four days at the most, he also did some spot news stories when the Authurine Lucy case broke out.

Q. Let me ask you this, Mr. Faber. Was that period of time coincident with the time at which the last individual, Mr. Phillips, was present covering the same news items? You said February the 8th—

A. February the 7th for Kihhs.

Q. Peter Kihhs on the 7th?

A. Well, I recall specifically what happened. Kihhs was down there on the eight-page Special and at that time the Authurine Lucy story broke out and so we sent Mr. Phillips down to cover the Arthurine Lucy developments and told Mr. Kihhs to continue on his gathering of information for the eight-page Special summary.

Q. All right. Mr. Kihhs was there you say on two occasions in 1956, the first of which was February—how long was he there in February?

A. I don't really know. My recollection is about two or three or four days at the most.

Q. All right. Then he was there again on another occasion in March?

A. Yes, sir.

Q. How long was he there on that occasion?

A. Oh, about one day. It was a limited assignment.

Q. All right. That covers Mr. Kihbs, doesn't it?

A. Yes, sir.

[fol. 310] Q. All right. Let's take Mr. Popham now. On what occasions was he assigned there and where and for how long in 1956?

A. In April of 1956 I assigned Mr. Popham to cover the bus boycott in Montgomery and he stayed on that occasion for about four or five days filing stories.

Q. Was there another occasion that he was here or was it just for that one occasion?

A. That was just one occasion and he just stayed.

Q. Now, you had Mr. Barrett next?

A. Yes, sir.

Q. On what occasion and where was he assigned by you and for how long in 1956?

A. Well, Mr. Barrett was in Montgomery in late 1956, December, and he came down here on assignment for the magazine to do a magazine story and also covered some news events for us in the same period of time on assignment for me.

Q. For how long?

A. He stayed there for approximately one week.

Q. In Montgomery?

A. In Montgomery. Yes, sir.

Q. And that was the only occasion he was here?

A. In 1956.

Q. Now, you assigned Mr. Benjamin but I believe you told me that you couldn't find any records about Mr. Benjamin. Is that right?

A. I had forgotten about Mr. Benjamin until I saw the documents introduced here with a byline on stories from Alabama.

Q. Do you have any independent recollection as to when you sent him and for how long a period of time?

A. No, I don't.

Q. You do have records to the effect that you did send him down here though?

A. Yes, sir.

Q. Did you not also assign Mr. Sitton to cover the trial of Martin Luther King here in Montgomery at about the [fol. 311] time this litigation was initiated and begun?

A. Yes, sir.

Q. And the coverage was aborted by the fact that we, as his attorneys, advised him not to be present and you did not include that in your assignment, did you?

A. No, I did not.

Q. But he was here for a few minutes before he was advised not to be here any more. That's correct, isn't it?

A. That's right.

Q. And he had come initially by your assignment.

A. Yes, sir.

Q. All right. That's all.

Recross examination.

By Mr. M. R. Nachman, Jr.:

Q. Mr. Faber, referring to Plaintiff's Exhibit No. 1 and Plaintiff's Exhibit No. 2 again and let's talk about Plaintiff's Exhibit No. 1 first. Is it your testimony that that $50 represents a computation by you of the amount of words or lines that Mr. McKee submitted for publication?

A. No, sir.

Q. Twenty-five dollars of that amount was for helping Harrison Salisbury, wasn't it?

A. For furnishing information to Salisbury. Certainly.

Q. Where does that appear on this "98" business that Mr. Embry was asking you about?

A. Well, it doesn't appear on the face of it but I presume—

Q. Well, how do you reach $50 on the basis of the figures that appear on the front of the envelope?

A. When I get the envelopes of all the stringers and based on my own recollection of the amount of words they

have sent in and the information they have given us, I make an independent computation based on the figures within the envelope and on the face of it.

[fol. 312] Q. Then, the figures on the face of the envelope are not meaningful in terms of Plaintiff's Exhibit No. 1 in determining how you arrived at that $50, are they?

A. Well, they are meaningful to me.

Q. Well, where is there anything on the face of this envelope about payment of $25 for helping Mr. Salisbury?

A. There is a summary of the amount of money based on all of the data inside it.

Q. What does the quotation marks "98" mean? What does that figure mean?

A. That, I don't know. It is an auditing figure, I think.

Q. On Mr. Chadwick's envelope, Plaintiff's Exhibit No. 2, the $100 indicated there includes the $25 paid to him for helping Mr. Salisbury, does it not?

A. It includes the $25. Yes.

Q. For helping Mr. Salisbury.

A. Yes.

Q. In either event, in terms of Plaintiff's Exhibit No. 1 or Plaintiff's Exhibit No. 2 there was a total payment for the purchase of news stories from these two correspondents, wasn't there?

A. I presume so.

Q. In both events, that is, in the April, 1960 payment to Mr. Chadwick and in the April, 1960 payment to Mr. McKee there was payment for something other than the sale of news lines to The New York Times. Isn't that correct, sir?

A. Yes.

Q. Their help to Mr. Salisbury did not include the sale of any material at all to The New York Times, did it?

A. Well, it was specifically for giving information to Mr. Salisbury.

Q. But not for the sale of any material to The New York Times for publication—

Mr. Embry: I object to that, Your Honor. That's a question of law for the Court—

Mr. Nachman: Your Honor, we think we have the right [fol. 313] to ask whether they paid this man for selling lines

to The New York Times for publication or whether they paid him for assisting one of their staff correspondents or—

Mr. Embry: Well, that makes about three times he has asked that question—

The Court: Well, we will let him repeat one more time.

Mr. Nachman: I simply wanted to ask him about the basis for—

Mr. Embry: Well, we object—

The Court: I will let him ask him one more time. Go ahead. He may have one more repetition.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. I will ask you, Mr. Faber, if these two exhibits, Plaintiff's Exhibit No. 1 and Plaintiff's Exhibit No. 2, reflect payments to the correspondents, McKee and Chadwick, for matters other than the sale of news material to The New York Times for publication? Is that right?

A. Well, I considered that information given to Mr. Salisbury as news material.

Q. Well, how did you arrive at the figure $25 then? Did you compute it by line or what?

A. No. I computed it that way because I thought it was a fair figure at that time.

Q. For the services that they rendered?

A. For the information that they gave Mr. Salisbury.

Q. Was it in accordance with the rates stated on your rules for correspondents?

A. No, sir.

Q. It was not, was it?

A. No, it was not.

Q. Now, what did you pay Mr. McKee for the work he did as reflected in Plaintiff's Exhibit No. 77, a telegram to Mr. Garat?

A. I paid him nothing.

Q. Was he paid by The Times?

[fol. 314] A. As far as I know. I don't know.

Q. Have you made any check on that?

A. No. I have not.

Q. I see. You have no memorandum on that.

A. No, sir.

Q. Now, do I recall correctly that you stated that Mr. Sitton came into Alabama on assignment on three occasions in 1960 or was it 1959? How many times did you say that he came here in 1959?

A. In 1959?

Q. Yes, sir.

A. Three.

Q. I would like to read to you from this statement a series of questions and answers and ask you that if Mr. Sitton made this testimony under oath whether or not you would say that he was incorrect. I am now reading from page 46 of the deposition. Question. "In 1959, to the best of your knowledge, how frequently did you come into Alabama to cover news events?" Answer. "Oh, a rough approximation—I would say ten or twelve times." Question. "And over how long a period of time would those occasions extend? I realize they may vary." Answer. "I imagine the longest period was on that Civil Rights Commission thing; I don't really recall. I would guess a week. That's a rough guess." Question. "Did—the longest period of time on any one of those ten occasions was a week?" Answer. "I think so. It might have been longer. It might have been ten days, but without refreshing my memory, I would say a week or possibly ten days." Now, my question is, when Mr. Sitton made those statements under oath in response to the questions would you say that he was incorrect about that?

Mr. Embry: Don't answer that question. We object to that.

Mr. Beddow: Just a minute. We object to that. It calls for the testimony of another individual taken at another occasion and at another time and place, if it please the Court, and it invades the province of the Court.

The Court: Well, I imagine he could sort of refresh the [fol. 315] witness' recollection. I will let it in and give you an exception.

Mr. Beddow: Your Honor, this testimony was taken in Atlanta and this witness was not there and he wouldn't know unless he was there—

The Court: I will let it in and give you an exception.

Mr. Beddow: Your Honor, he is asking this witness to interpret the truthfulness of another man's testimony made in Atlanta—

Mr. Embry: Your Honor, this witness—

Mr. Nachman: Your Honor, I am only asking him whether he disagrees with—

The Court: Whose testimony are you asking him about?

Mr. Nachman: Your Honor, this is Mr. Sitton's testimony and I am asking him if Mr. Sitton made this statement under oath if Mr. Faber would disagree with him or say that it was incorrect.

The Court: I understand. Well, I don't think that's a good question. I will give you an exception. I thought you were asking about his testimony.

Mr. Nachman? No, sir. I was asking about Mr. Sitton's testimony.

The Court: Well, you have an exception. Go ahead.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, am I not correct, sir, that the figures you have given on Re-Direct Examination do not include occasions when these staff correspondents came into Alabama on their own initiative and not under orders from you?

A. I don't recall a single occasion when they came on their own initiative.

Q. Your testimony is then that Mr. Sitton only came into Alabama on three occasions in 1959.

A. According to my records.

Q. I am asking you from your testimony—

A. My recollection is that he came in three times.

[fol. 316] Q. You say positively then that he did not come to Alabama on more than three occasions in 1959? Is that your testimony, sir?

A. I wouldn't say that positively.

Q. You may be wrong, may you not?

A. Oh, I may be wrong, certainly.

Q. You will not state positively then that he did not come into Alabama on more than three occasions in 1959.

Mr. Embry: We object to that as being argumentative, Your Honor. He has stated the same question about eight different times.

The Court: Well, it is re-cross examination and I will let it in. He can give his best recollection about it.

Mr. Embry: Go ahead.

The Court: Your best recollection.

The Witness: My best recollection is that he was here on three occasions.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, how many times did you say that Mr. Sitton was in Alabama in 1958?

A. Once.

Q. Now, Mr. Faber, I show you Plaintiff's Exhibits numbered 95, 96, 97 and 98 which are New York Times expense statements for Claude Sitton and I will ask you to look at those and state how often those expense accounts show that Mr. Sitton submitted statements of expense for trips to Alabama in 1958?

Mr. Embry: We object to that, Your Honor. He has testified that he didn't know anything about these.

The Court: What was that again?

Mr. Embry: He has testified he didn't know anything about the expense statements nor the procedure and the documents themselves would be the best evidence and they are already in evidence, if the Court please.

Mr. Nachman: Your Honor, this is cross examination and I think I have the right to—

[fol. 317] The Court: I think you have a right to question the witness about it. He might find out that he was in error if he said he was here three times or it may be that he is not in error. Go ahead.

Mr. Embry: We except.

The Witness: The first sheet shows that—

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. What exhibit are you talking about now?

A. I'm sorry. Plaintiff's Exhibit No. 97. This shows that Mr. Sitton arrived in Montgomery at 9:30—I'm sorry. He arrived in Montgomery at 1:30 P. M. on June 2nd—

Q. Just give us the number of occasions.

A. He shows that he was in Birmingham on June 3rd and 4th—

Q. What year?

A. I'm sorry. There is a penciled notation there that indicates 1958, I think.

Q. Go ahead with the next one.

A. Plaintiff's Exhibit No. 98 shows an arrival in Huntsville, Alabama, on May 20th and departure on May 21st—

Q. Where?

A. Huntsville. It also shows on May 31st arrived at Huntsville on May 31st and departed on June 1st.

Q. What year?

A. In 1958. Again on Plaintiff's Exhibit No. 96 it shows Mr. Sitton arriving in Huntsville on July 23rd and leaving on July 24th—leaving the same day. I beg your pardon. Arriving July 23rd and leaving on the same day. On December 1st he shows an arrival in Tuskeegee and on December 3rd it shows an arrival in Montgomery and on December 5th leaves for Birmingham. On December 7th he left Little Rock to Birmingham and took a plane out of Birmingham to Montgomery and left Montgomery on December 9th. This is on Plaintiff's Exhibit No. 95.

Q. So, those statements show that he was in Alabama more than your records show that he was in Alabama—

Mr. Embry: We object to that, Your Honor, because it [fol. 318] is not shown—those things don't show whether he was doing anything for The New York Times in connection with gathering news or working in connection with any of the corporate functions of that newspaper on the occasions that they say—

Mr. Nachman: Well, these statements show that the expenses thereon have been paid, don't them? Aren't they stamped paid?

The Witness: Yes, sir.

The Court: Well, they are already in evidence. The Court can figure out how many times he was here. Go ahead.

By Mr. M. B. Nachman, Jr.: (Continuing)

Q. The New York Times doesn't pay its correspondents for jaunts of their own, does it?

A. No, sir.

Q. It has to be on business of The Times, doesn't it?

A. Certainly.

Q. That's what I thought, sir. Now, let's get to Popham in 1957. How many times did you say your records indicated that he was in Alabama in 1957?

A. My records don't show any news events covered by Popham in 1957.

Q. All right, sir. Now, I would like to show you Plaintiff's Exhibits No. 100, 101 and 102 and ask you whether those exhibits do not show expense statements of Mr. Popham for trips to Alabama during 1957 and also show that those expenses were submitted and that he was paid.

A. Plaintiff's Exhibit No. 102 shows an arrival and departure in Birmingham. Plaintiff's Exhibit No. 101 shows an arrival at Gadsden and at Tuskeegee and a departure from Gadsden. Plaintiff's Exhibit No. 100 shows an arrival and departure from Florence, Alabama. Plaintiff's Exhibit No. 99 shows an arrival and departure from Memphis and also an arrival and departure from Huntsville.

Q. Now, how about Mr. Kihbs in 1956? What was your testimony about him?

A. In 1956?

[fol. 319] Q. Yes, sir.

A. There were two occasions on which Kihbs covered news events in Alabama.

Q. How long a period of time?

A. My recollection was that on each occasion it was for one or two days. No. On the first one I think he came down on a magazine assignment and stayed a little longer than that. That was on the first occasion.

Q. I show you Plaintiff's Exhibit No. 113 and ask you whether this doesn't show that Peter Frederick Kihbs was in Alabama continuously from January 22nd through January 31st and also again on February 2nd through February 4th?

A. It shows that Mr. Kihbs came into Alabama on January 22nd and stayed through January 31st.

Q. Continuously?

A. Yes, sir, continuously.

Q. Didn't he come in also on February 2nd and stay until February 4th?

A. Yes, sir. He came back to Mobile on February 2nd and stayed until February 4th.

Q. All right, sir. Now, how about Popham in 1956?

A. Well, if I remember correctly, I think I mentioned one continuous assignment for four or five days.

Q. Didn't he come in and out of Alabama on two or three occasions during that time?

A. He may have come in and out of Alabama.

Mr. Embry: If the Court please, we want to object to that. A number of these instances show from the exhibits that obviously Birmingham and Huntsville and those places are points where a man changed airplanes or changed his mode of transportation at a connecting point—

Mr. Nachman: Your Honor, you will recall—we think that there is a substantial difference in—

The Court: Well, these are already in evidence.

Mr. Nachman: Yes, Your Honor, but we think that they [fol. 320] indicate that this witness may be mistaken as to the completeness of the memorandum which he used to refresh his recollection on and they are in substantial conflict with some of these other records of The New York Times—

Mr. Embry: They are not in conflict, Your Honor. They just don't understand what they show and—

The Court: Well, the Court will not consider anything except what is competent and relevant testimony. Go ahead.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Faber, turning back to your memorandum, who prepared your memorandum, sir?

A. Which memorandum?

Q. The one that you referred to in your previous testimony, sir.

A. This was prepared by Kenneth Campbell, a reporter for The New York Times.

Q. What records did he use in order to prepare that memorandum?

A. He used a morgue in our clipping service that classified articles and the bylines of reporters.

Q. In other words, he simply referred to the news stories of those reporters in order to compile that memorandum. Is that correct?

A. Yes, sir.

Q. And there was no attempt made by him to determine how long these people stayed in Alabama on these various occasions, was there?

A. No, sir.

Q. There was no attempt at all made by him to determine that.

A. Not by him.

Q. Was there any other attempt to do so in the preparation of that memorandum—

A. Just my recollection based on these news stories.

Q. Your recollection based on the news stories.

A. Yes, sir.

Q. And this other gentleman's actual search of the news stories.

A. Yes, sir.

[fol. 321] Q. And no other records of The New York Times were examined in order to determine how long and how often these men had been in Alabama during the period of time covered in it.

A. Not in this memorandum. No, sir.

Mr. Nachman: We move to exclude it, Your Honor, because obviously it is not based on all of the records of The New York Times and these expense statements which are in evidence were not even consulted in the preparation of that memorandum and we move to exclude it.

The Court: I will take the motion under consideration. I am inclined to leave it in though and if I do I will give you an exception.

Mr. Nachman: All right. We have no further questions, Your Honor.

Redirect examination.

By Mr. T. Eric Embry:

Q. This telegram that he referred to of Mr. McKee's which you said you didn't know about, that is, Exhibit No. 77, you did not initiate the request that this—

A. No, sir.

Q. You had nothing to do with it.

A. No, sir.

Q. All right. That's all. No further questions.

JOSEPH B. WAGNER, having been duly sworn, was called as a witness for the Defendant and testified as follows:

Direct examination.

By Mr. T. Eric Embry:

Q. This is Mr. Joseph B. Wagner?

[fol. 322] A. Yes, sir.

Q. Mr. Wagner, where do you reside?

A. Long Island, New York.

Q. Are you an employee of The New York Times Company?

A. I am, sir.

Q. How long have you been an employee of that company?

A. For nineteen years.

Q. Are you the Assistant National Advertising Manager?

A. No. I am the National Advertising Manager.

Q. Is one of the functions of your department the acceptance and publication of advertising from those who seek to place advertising in The New York Times newspaper?

A. No.

Q. Do you, as National Advertising Manager, supervise the records pertaining to advertising that is placed in The New York Times newspaper?

A. Yes.

Q. Now, during the years 1956, 1957, 1958 and 1959—I

withdraw that. During the year 1960 up through April, 1960, do you have available to you the information from your records with reference to the amount of advertising that was placed in The New York Times from advertisers in the State of Alabama?

A. Yes. We get that information from our statistical department.

Mr. Baker: If the Court please, we believe that the records would be the best evidence.

Mr. Embry: Well, Your Honor, I can't do it all at one time.

The Court: Well, if you don't connect it up, I will throw it out. Go ahead.

Mr. Baker: Well, if he is going to connect it up, Your Honor, I will withdraw the objection.

The Court: All right. Go ahead.

By Mr. T. Eric Embry: (Continuing)

Q. Have you during the year 1960 assigned any advertis- [fol. 323] ing representative of The New York Times Company to go into the State of Alabama for the purpose of soliciting advertising?

A. No. Not of The New York Times Company.

Q. Has there been anyone acting in behalf of The New York Times Company that has, in fact, gone into the State of Alabama during the year 1960 for the purpose of soliciting advertising to be placed in The New York Times Company paper, The New York Times?

A. There has been nobody from The New York Times Company in the State of Alabama for the first five months of 1960 soliciting advertising.

Q. Has there been anyone else who has solicited advertising for the New York Times Company?

A. There has been from the New York Times Sales Incorporated from the Atlanta office.

Q. Is the New York Times Sales Incorporated an advertising solicitor that solicits business for The New York Times Company?

A. Yes, sir. They are a separate organization.

Q. All right. You say that someone from that organization has solicited advertising in Alabama during 1960.

A. Yes, sir.

Q. Do you know who that individual or individuals are?

A. I believe that Mr. Hurley and Mr. Monger were in Alabama during the first five months of 1960 working out of the Atlanta office of The New York Times Sales Incorporated.

Q. Do you know the dates and occasions on which either of those gentlemen have been in Alabama for the purpose of soliciting advertising as employees of The New York Times Sales Incorporated?

A. I don't remember them but I believe I can find them in my file here. I think you have that.

Mr. Baker: Your Honor, we are going to object to this witness testifying as to dates of which other persons or another person was in the State of Alabama. Mr. Hurley has already given a deposition in this case and we would like to know what records he is referring to.

The Witness: What records I am referring to?

Mr. Baker: Yes, sir.

[fol. 324] The Witness: Well, I have—

Mr. Embry: Just a minute. The Judge has not directed you have to answer that as yet. If it please the Court, his testimony has shown that The New York Times Sales Incorporated, a separate corporation, has solicited advertising for The New York Times Company and now we propose to show on what occasions and what the extent of that was insofar as his knowledge goes to that matter. We want to show how much and what he knows about it.

The Court: What were your grounds of objection, Mr. Baker?

Mr. Baker: It is without the personal knowledge of the witness as to when another person is in the State of Alabama—

The Court: Well, does he have any personal knowledge of these things?

Mr. Embry: Yes, sir. I can go a little further, Your Honor, and—

The Court: Well, supposing you go further into it and lay more predicate. Go ahead.

By Mr. T. Eric Embry: (Continuing)

Q. Do you have any knowledge of the activities of the employees of The New York Times Sales Incorporated in connection with their solicitation on behalf of the New York Times Company of advertising in the State of Alabama from the 1st of January, 1960 through the first five months of 1960?

A. I do because they send an itinerary to our office in New York indicating whenever they are going to be out of town and we also get their expense statements too.

Q. Do you mean by that that they report to you where they are going and when?

A. They send up a copy of their itinerary in case we want to get in touch with them when they are out of town or not in the Atlanta office and moving about. We have a copy of their itinerary.

The Court: You are in the home office in New York City?

[fol. 325] The Witness: Yes, sir.

By Mr. T. Eric Embry: (Continuing)

Q. Now, has that been true during 1960 and during the period of time we have been talking about?

A. Yes, sir.

Q. That same situation?

A. Yes, sir.

Q. Do you know how many employees the New York Times Sales Incorporated has in its Atlanta office?

A. I do.

Q. How many?

A. They have three.

Q. Of what does that staff consist? Who are those people?

A. Thomas Hurley is the manager of the Atlanta office of The New York Times Sales Incorporated. Frank Monger is a salesman working with Mr. Hurley and Miss Cornelia Dobbs is the stenographer working in the Atlanta office.

Q. Now, with respect to Mr. Monger and Mr. Hurley as employees of The New York Times Sales Incorporated, does that concern have a territory or did it have an area

within which it is employed to solicit advertising for the New York Times Company?

A. Yes, sir.

Q. What area or geographical limit is it within which those people are to solicit advertising for The New York Times Sales Company?

A. The whole State of Georgia, North and South Carolina, Tennessee, Alabama and Mississippi and the Cities of New Orleans and Baton Rouge in Louisiana.

Q. I believe you have already testified that during 1960 the only solicitation of advertising for The New York Times Company was by The New York Times Sales Incorporated in Alabama. Is that correct?

A. Yes, sir.

Q. In that connection, do you have any memorandum to refresh your recollection with or from which you can [fol. 326] testify and tell His Honor who and on what occasions the representatives of The New York Times Sales Incorporated came into Alabama for the purpose of soliciting advertising for The New York Times Company?

A. If you will let me have that file, I can tell you.

Mr. Nachman: Your Honor, we made an objection earlier and we still think that the records themselves are the best evidence.

The Court: Well, when you say to refer to the records, what do you mean by the records?

Mr. Nachman: The records that this witness is now examining and is about to testify from.

The Witness: What shall I do, Your Honor?

Mr. Nachman: I don't know what he has there but apparently they are records of The New York Times.

The Court: What do you have there?

The Witness: I have a memo and one of my assistants gave me a run-down.

The Court: Well, it would be all right for me—for Mr. Nachman to take a look at it, wouldn't it?

Mr. Embry: Surely, Your Honor. He may look at the file.

The Court: Go ahead and take a look at it.

Mr. Nachman: Your Honor, we think that there should be some identification as to who Roger Atwood is—

Mr. Embry: Your Honor, we have not offered that document into evidence.

The Court: Well, if it hasn't been offered in evidence there is no question about it then. Go ahead.

By Mr. T. Eric Embry: (Continuing)

Q. Mr. Wagner, have you prepared a certain memorandum and have you had others of your organization prepare certain memoranda from the record from your organization for the purpose of your being able to refresh your recollection about specific matters of which we have inquired of you in anticipation of your testimony in respect to matters connected with this hearing?

[fol. 327] A. Yes, sir.

Q. Is one of those memoranda which you caused to be prepared for you this paper that Mr. Nachman was examining just now dated May 13th, 1960 directed to you and signed by Roger Atwood?

A. Yes, sir.

The Court: Who is Roger Atwood?

The Witness: Roger Atwood is an Assistant to the National Advertising Manager.

The Court: His headquarters are where?

The Witness: His headquarters are located in New York.

The Court: Does he sort of work for you? Do you have a general supervision over him?

The Witness: Yes, sir.

Mr. Nachman: Your Honor, I object because we have a memorandum which has been prepared by an employee of The New York Times Company which apparently has been extracted from their records and this witness now in his testimony proposes to read from it and we think that the memorandum itself ought to go into evidence as being the best evidence as to what their records show about these matters.

The Court: Which memorandum are you speaking of?

Mr. Nachman: I am speaking of the memorandum which has been identified as being dated May 13th, 1960.

Mr. Embry: Your Honor, I will be happy to introduce

this into the Record after laying a predicate to show what it means.

The Court: Well, let's lay the predicate first then. Go ahead.

By Mr. T. Eric Embry: (Continuing)

Q. At your request and direction and under your supervision did Mr. Roger Atwood, one of your assistants, over whom you have supervision, during the period of 1959 and 1960, prepare for you from the original records of The New York Times Company in New York City this memorandum reflecting the names of the persons and the amount of time those persons had spent in the State of Alabama [fol. 328] soliciting advertising during the years 1959 and 1960?

A. Yes, he did.

Q. Now, you have testified that Mr. Thomas M. Hurley is and was during the year 1959 an employee of The New New York Times Sales Incorporated. Is that correct, sir?

A. Right.

Q. And that is who is referred to when the name "Hurley" appears on this memo?

A. Yes, sir.

Q. And that Mr. Monger—I don't believe you told us his first name.

A. Frank.

Q. Frank Monger is an employee of The New York Times Sales Incorporated—

A. Right.

Q. And that is who this refers to when the name "Monger" appears.

A. Right.

Q. Now, who is "Sullivan" as appears on the memorandum?

A. Sullivan is a member of the New York staff of The New York Times advertising department.

Q. Is he an employee of The New York Times Company, a corporation?

A. Yes, sir. He is.

Q. In the advertising department?

A. Yes, sir.

Q. Who is J. McCullough?

A. He is a member of the New York staff of the advertising department and is employed by The New York Times Company. Now, I made a mistake when I said before that I thought both Hurley and Monger had been in Alabama in 1960. I find now that only Mr. Monger had been here in the year 1960.

Q. You mean as of the date of this memo of May 13th?

A. Yes, sir.

Q. With that correction, I will ask you if the words and figures which say "1959—Hurley" and it says, "Birmingham —2 days." What does that mean?

A. It means that he spent two days in Birmingham.

[fol. 329] Q. What does it mean when it says "Montgomery—4 days."

A. It means he spent four days in Montgomery.

Mr. Nachman: I am sorry to interrupt but it seems to me that we ought to have this introduced into evidence before the witness is examined about it. There is nothing in the record now to show anything about the documents that this witness is being asked about—

Mr. Embry: Your Honor, may I state to the Court that I have no intention of not offering this in evidence.

The Court: Well, if the witness is asked about it, it will have to be introduced into evidence.

Mr. Embry: I intend to do so, Your Honor.

The Court: Go ahead.

By Mr. T. Eric Embry: (Continuing)

Q. Now, you said that Hurley was in Montgomery for four days?

A. Yes, sir.

Q. And Selma for one day.

A. That's right.

Q. Monger in Birmingham for two days.

A. Right.

Q. And Sullivan in Mobile for eight days.

A. Right.

Q. In Montgomery for four days.

A. Right.

Q. And in Birmingham two days.

A. Right.

Q. J. McCullough in Birmingham and Montgomery for three days.

A. That's right.

Q. Is that a total of the days—

A. Yes, sir. A total of three days between the two cities.

Q. And in 1960, Monger, Birmingham, one day.

A. That's right.

Mr. Embry: We offer this in evidence, if the Court please.

[fol. 330] The Court: I will let it in.

Mr. Baker: If the Court please, we ask that it be read.

The Court: Well, why not let the Court read it and that will save some time. Mr. Reporter, let the Record show that the Court read it cover to cover, all four pages.

(Court reads Defendants' Exhibit No. 1.)

The Court: All right. It is in subject to any legal objection.

(Memorandum dated May 13, 1960, addressed to Mr. Wagner and signed Roger Atwood, offered and received in evidence and identified as Defendants' Exhibit No. 1.)

By Mr. T. Eric Embry: (Continuing)

Q. Mr. Wagner, describe for His Honor if you will, please, sir, and assume as I will state to you now that I am speaking of a period of time from the 1st of January, 1960 through the month of April, 1960 in the question that I am about to ask you and describe to His Honor the method by which advertising material is placed in your paper for publication. Tell us how it gets to you and what is done with it when it reaches you for that period of time from any advertiser within the State of Alabama.

A. Well, we can receive advertising copy as a result of an agency placing copy of their clients in The New York Times and we can also receive advertising directly from an advertiser. The mechanics of our handling this adver-

tising generally speaking and particularly in the State of Alabama would be for a recognized advertising agency to prepare a piece of copy and send it to New York with an order or a contract and they have to send the necessary printing material with it and after the copy has been screened and gone over by our advertising acceptability [fol. 331] department and our production department, if the advertising agency is a bona fide recognized agency with satisfactory credit arrangements, then we print the ad. Is that what you wanted?

Q. Yes, sir. Now, has there been any advertising during the year 1960 that has been placed with The New York Times newspaper, the New York Times Company, and by placed, I mean forwarded to you in New York for running or publication in the paper from either an advertiser or an advertising agency in behalf of an advertiser from within the State of Alabama?

A. Yes.

Q. In 1960.

A. Yes. There has been.

Q. Do you have some information relative to who they were and how many?

A. There were probably thirty ads that were placed.

Mr. Nachman: Your Honor, once again, if this witness is referring to a memorandum which is a part of the business records of The New York Times, then we object to his testifying from that memorandum and we think that the memorandum should go into evidence in line with our objections to the last exhibit—

The Witness: Well, suppose I—

Mr. Embry: Just a minute.

Mr. Nachman: I don't know whether he is or not but if he is, then we make that objection.

The Court: Let me look at the memorandum in question for a moment. Now, what is the chief objection to this, Mr. Nachman?

Mr. Nachman: May I see it, Your Honor? My objection is, Your Honor, that this document which I take it has been extracted from the records of The New York Times, ought to be introduced into evidence instead of having

the witness reading such figures from a memorandum which has been prepared, unless he is relying on his own knowledge of the matter and I take it that he is not and that he is relying on what this memorandum contains. We also think that a substantiating record should be introduced into evidence.

[fol. 332] Mr. Embry: Your Honor, it would be obviously impossible for any human being short of a genius, I would assume, to recall what he had gone into the records and read and observed and retained in his memory—

The Court: Well, I understand that if Mr. Wagner refers to this memorandum that it will be introduced into evidence.

Mr. Embry: Your Honor, I think we have a right to offer that memorandum to him for the purpose of refreshing his recollection as well as any other memorandum that he may have—

The Court: Well, when you do that, doesn't his testimony and the memorandum become part of the evidence? That's my understanding of the rule.

Mr. Embry: I don't think so, Your Honor—

The Court: Well, you can check into that. He just can't refresh his recollection from this memorandum and then not let the memorandum go in.

Mr. Baker: This memorandum was prepared in the Comptroller's office which is an entirely different department from his department.

Mr. Embry: Your Honor, I might point this out. We were required by Your Honor to produce about eighty-five pounds of documents relating to this same sort of thing and in anticipation of those documents being attempted to be made a subject for evidence in this case, it became necessary for the defendant to prepare for the witness for his own use memoranda from which he could testify so as to refresh his recollection as to the extent of the advertising and as to whether there was any originating in the State of Alabama and if so by whom it was placed and how much money was paid for it and who solicited it, if anyone, in behalf of this corporation and during what period of time and it is quite a voluminous thing as Your Honor must necessarily have observed in this hearing.

We have spent hours going over it and I can't examine this witness in toto in five minutes and I would like the opportunity of going forward and being permitted to develop my evidence. I would like Your Honor to rule on his objec-
[fol. 333] tions and let's be done with them and go ahead.

The Court: Well, I will say that if he testifies from this memorandum that the memorandum will have to go in.

Mr. Embry: Well, then, I will not examine him about the memorandum, Your Honor. May we have a moment to confer, Your Honor?

The Court: Yes.

(Off the Record discussion between counsel.)

By Mr. T. Eric Embry: (Continuing)

Q. Did you prepare for yourself from the records of The New York Times Company, within your own department, a memorandum with respect to the advertising of Alabama advertisers the amount of lines in the paper and I will ask you to explain more about that in detail later, for the year 1959 and part of the year 1960?

A. I did have that prepared in my department.

Q. Now, I show you a document identified as Defendants' Exhibit No. 2 for identification and ask you to tell us whether that is the memorandum you have just described.

A. Yes, sir. That is a copy of it.

Mr. Embry: If the Court please, we offer this memorandum into evidence and we want to examine the witness about it.

(Court examines Defendants' Exhibit No. 2.)

(Memorandum entitled "Alabama Accounts" for the year 1959 and January and April, 1960, offered and received in evidence and identified as Defendants' Exhibit No. 2.)

By Mr. T. Eric Embry: (Continuing)

Q. What do you refer to and what is referred to on your memorandum there, Defendants' Exhibit No. 2, as lineage? What do you mean by lineage?

[fol. 334] A. Well, lineage means the actual number of lines that were printed on a full sized page. In our weekday and Sunday paper there are twenty-four hundred lines on each page and eight columns to the page and our magazine there are eight hundred fifty lines to a page because that is tabloid size and there are one hundred seventy lines in each column and five columns to the page.

Q. Well, you have me confused now. The normal page is what? Twenty five hundred lines?

A. The normal page is twenty-four hundred lines and there are eight columns in one of our full sized pages and there are three hundred lines in each column.

Q. So that an average normal page other than your tabloid size which is your Sunday publication—

A. Of which there are eight hundred fifty lines. That's right.

Q. As contrasted to the normal page of twenty-four hundred lines.

A. Yes, sir.

Q. Now, do you have on your memo there the total number of lines placed by Alabama advertisers in The New York Times for the months of January and April—January through April, 1960, both inclusive?

A. Yes, sir.

Q. Is that thirteen thousand two hundred fifty-four lines?

A. Yes, sir. Thirteen thousand two hundred fifty-four lines.

Q. And there being twenty-four hundred lines to the page.

A. Yes, sir,

Q. Do you have that information giving the names of the advertisers for the year 1959 showing the total number of lines of advertising placed in your paper by Alabama advertisers?

A. Yes, sir.

Q. What is that?

A. That figure is five thousand four hundred seventy-one in 1959.

Q. Mr. Wagner, as a predicate to this question I want to ask you, you have just testified that for the period January through April, 1960, both inclusive, there appeared in The

[fol. 335] New York Times newspaper thirteen thousand two hundred fifty-four lines of advertising of Alabama advertisers. Tell His Honor if you will, please, sir, how many lines of advertising were carried in the New York Times newspaper in toto from all advertisers all over the nation during that same period of time?

Mr. Baker: We object to that.

Mr. Nachman: We object to that, Your Honor. The question is whether they were doing business in Alabama—

The Court: Go ahead.

Mr. Embry: Your Honor, there are many cases and we can give Your Honor citations—

The Court: I will let it in. Go ahead. You may have an exception to the Court's ruling.

By Mr. T. Eric Embry: (Continuing)

Q. Do you remember the question?

A. Do you mean for the first half of this year?

Q. Yes.

A. We have carried a little better than—

Mr. Nachman: We object to that. The first half of the year was not covered by the question—

The Court: Well, connect it up specifically.

Mr. Embry: My question was—

The Court: Connect it up as to whatever the date was.

By Mr. T. Eric Embry: (Continuing)

Q. January through April, Mr. Wagner. Not the first half of the year. January through April inclusive.

A. The January through April figure would be a little in excess of twenty million lines.

Q. Twenty million lines?

A. Yes, sir.

Q. Twenty million lines of advertising as compared to thirteen thousand two hundred fifty-four?

[fol. 336] A. Yes, sir.

Q. Now, you have testified that Alabama advertisers carry five thousand four hundred seventy-one lines of advertising in The New York Times during the year 1959.

How much advertising was carried in The New York Times for all advertisers in the year 1959 throughout the nation?

A. Over sixty million.

Q. Over sixty million?

A. Yes, sir.

Q. Now, you have told us that advertising which came from Alabama advertisers may come directly from the advertiser or may be placed in their behalf by an agent or agency which you referred to as a recognized or bona fide advertising agency.

A. Yes, sir.

Q. Is there any other means by which advertising can be placed in your newspaper from an advertiser in Alabama and could have been during 1959 and 1960?

A. Well, it would have to be direct or through an advertising agency.

Q. Now, in the case of an agency, how is advertising and such as that that was in fact placed by an agency and making that distinction rather than direct—this memo shows that certain advertising was placed by an agency—how does the agency place the advertising with The New York Times to be carried by it? By what means do you get the advertising of these agencies which you did get during 1959 and 1960 from Alabama?

A. Well, they send it up by mail and I suppose they bring it up in person.

Q. Do you recall any instance where that has ever happened?

A. No, but we usually receive insertion orders and printing material in the mail except where there is an advertising agency based right in New York. Generally speaking, it would be through the mail.

Q. All right. Now, during the year 1959 and 1960 did either of the gentlemen you have mentioned who were soliciting advertising for you during the time they solicited it for you, whether employees of yours or members or employees of The New York Times Sales Incorporated, did any of those men, McCollough, Sullivan, Monger or [fol. 337] Hurley, have any authority from you to enter into any contract in the State of Alabama with reference

to carrying advertising by The New York Times newspaper?

A. No.

Q. Do you reject or accept advertising after it reaches your plant in New York?

A. We sure do.

Q. Are all contracts for the running of advertising by you made and accepted in New York?

A. Yes, sir. They certainly are.

Q. What is the procedure or the mechanics during this period of time of 1959 and 1960—wait just a minute. I withdraw that question. Is some advertising placed with you as a result of a contract made by The New York Times Company with an advertising agency and with individual advertisers?

A. Well, an advertising agency can put into effect a contract for an individual account with the Times.

Q. All right. Limiting the information to that right now, have there been any contracts, or can you tell by looking at that memo there, whether any of the advertising placed during 1959 and 1960 was placed as the result of a contract between an agency and The New York Times?

A. Yes. The Birmingham Committee of 100 has signed a contract with us.

Q. You are talking about what year now?

A. Well, they had one in 1959 and they have one currently.

Q. Is that advertising contract for the running of the Birmingham Committee of 100 advertising with an agency or is that direct?

A. That is through an agency.

Q. What agency is that?

A. The Sparrow Agency.

Q. Sparrow?

A. Yes, sir.

Q. Now, let me see if I have got it straight. We were talking about the Committee of 100 which I believe placed advertising by means of a contract between The New York Times Company and the Sparrow Advertising Agency of [fol. 338] Birmingham, Alabama, both in 1959 and 1960,

and there is a contract I believe you said in existence now for the placing of that advertising.

A. Yes, sir. —

Q. Now, did we make clear or did I ask you with respect to whether in connection with those contracts for advertising, the two that you mentioned of 1959 and 1960 with Sparrow, whether any advertising solicitor and an employee of The New York Times Company or a solicitor you have described who solicits for The New York Times Company and an employee of another concern has any authority to make such a contract with an advertising agency in Alabama or did either of those individuals have any such authority during 1959 or 1960?

A. No, they didn't.

Q. Now, tell His Honor whether those two contracts you mentioned of 1959 and 1960 and the current one in effect, were prepared on a form of The New York Times Company and forwarded to the advertising agency, to the Sparrow Agency in Birmingham, with the signature of the agency affixed thereon and the contract returned to you in New York and accepted by you and signed by a representative of The New York Times Company in New York after which it was returned to New York?

A. Yes. After it is returned to New York it is countersigned by one of the Executives, either the Business Manager or the Associate Business Manager.

The Court: How do you accept it? Do you write them a letter or what do you do?

The Witness: No, sir. When we have an advertiser who wants to sign a contract with us, we make out the forms in duplicate and send them to the agency and then the agency signs both of them and we keep the original and send the duplicate back to the advertising agency countersigned by the Business Manager or the Associate Business Manager or someone in authority.

The Court: In The New York Times office?

The Witness: Yes, sir. In the New York office. We keep the original there and send the duplicate back to the agency.

[fol. 339] By Mr. T. Eric Embry: (Continuing)

Q. Now, the indications from your testimony would lead me to ask you whether as a matter of fact during 1959 and 1960 there was any other advertising placed with you by means of an advertising contract and so I am now asking you whether there was any other contract, other than The Birmingham Committee of 100 or the contract with Sparrow relative to the Committee of 100 advertising, and I am asking you now whether there was any other advertising placed with you by means of making an advertising contract during those years?

A. In 1959 and 1960?

Q. Yes.

A. Yes, sir.

Q. If there were, how many other contracts were there from Alabama?

A. The Alabama Planning and Industrial Development Board, Bureau of Publicity and Information, came through the Sparrow Advertising Agency.

Q. Is that the advertising of the State Publicity Department?

A. Yes, sir.

Q. When was that contract in effect? For what period of time? Do you recall?

A. No, but I know that it is not in effect now. It has expired. It was sometime during 1959 and 1960 but right now it has expired.

Q. Sometime during 1959?

A. Yes, but it might have expired sometime in January or February of 1960. It might have started in 1959 and expired in 1960.

Q. When was the contract entered into by and between the Sparrow Advertising Agency and The New York Times Company with respect to the advertising of The Alabama Planning and Industrial Development Board and Bureau of Publicity and Information? Was that during 1959?

A. Yes, sir.

Q. Was that contract made and entered into in the same fashion as you have described the contract with Sparrow relative to the Committee of 100 advertising?

[fol. 340] A. Yes, sir.

Q. That is, in respect to the preparation of it by you and the forwarding of the two copies to the Sparrow Advertising Agency and there affixing their signature thereon and returning it to you and you affixing your signature thereon?

A. Yes, sir.

Q. In New York City?

A. Yes, sir.

Q. Now, does any member of your department, the Advertising Department of The New York Times Company, presently reside in the State of Alabama?

A. No, sir.

Q. Did any member of your department, the Advertising Department of the New York Times, reside in the State of Alabama during the year 1959?

A. No, sir.

Q. Has any solicitor that you have described to us and referred to or not, whether you have talked about them or not, has any solicitor of advertising for The New York Times Company by whomever he may have been employed during the year 1959 and 1960 been a resident of the State of Alabama?

A. No, sir.

Q. Now, what do you call a format? What does the word format mean in the parlance of the newspaper world or in your department, the Advertising Department?

A. It means the shape.

Q. The shape?

A. Yes, sir.

Q. All right. What do you call copy? What is copy?

A. The content of the advertisement.

Q. Now, if someone makes up something that is proposed to be an ad, do you refer to that as copy?

A. Yes, sir.

Q. Is that what you call it?

A. Yes, sir. The content of the ad would be the copy.

Q. And the format would be its physical shape?

[fol. 341] A. Yes, sir.

Q. Are these items or ads that were the result of the transaction you have referred to in your memorandum

from the advertisers in Alabama by whomever they were placed—was the copy and material or content of those ads prepared by the agency and forwarded to you at the New York office?

A. Yes, sir.

Q. Is that how it is done?

A. Yes, sir. That's how it is done.

Q. Was that true during the period of 1960 up to—

A. Yes, sir.

Q. And during 1959?

A. Yes, sir.

Q. During that same period of time, of 1959 and 1960 thus far, did any of these solicitors you have described on the occasions they solicited advertising from agencies in Alabama or individual advertisers, did any of those individuals have any authority to accept or reject advertising when they were in and about their solicitation of same in behalf of The New York Times Company?

A. No, they don't have any authority to do that.

Q. Do they have any authority from The New York Times Company to make any contract to the running of advertising when they call on a person to solicit advertising from them?

A. To make a contract?

Q. Yes.

A. No.

Q. Now, does your department within the realm of your knowledge in the advertising department, own any property of any kind real or personal in the State of Alabama at the present time or has it owned any such properties during the year 1959 and the year 1960?

A. Not that I know of.

Q. Now, does your department within the realm of your knowledge in the advertising field there at The New York Times—does it presently have any bank account in the State of Alabama?

[fol. 342] A. Not that I know of. No, sir.

Q. Has it had any bank account in Alabama during 1959 and 1960?

A. No. Not that I know of.

Q. Now, where is the type—the lead, I guess you would call it type that makes the impression on the paper when the paper is printed on an ad—where is that type put together and made into type in the sense that it is made into words and figures? Where is that done for the running of advertising of advertisements of Alabama advertisers during this same period of time I have been asking you about in 1959 and 1960?

A. Well, that could be done in a number of places.

Q. Well, let me limit the scope of my inquiry. Has that ever been done in the State of Alabama by any representative, employee or agent of The New York Times Company?

A. Oh, no. It couldn't be done by—no. No, sir.

Q. Is the type made up in New York or the lead or the linotype or however you do it?

A. Well, wherever the type has to be set when we get a piece of copy it requires the setting of type and it is done right in our own composing room. It is set right there in our own composing room.

Q. Well, that's what I was trying to get you to tell me. Now, are these advertising agencies—you mentioned a few in your memorandum which is in evidence as Defendants' Exhibit No. 2—Sparrow you have already talked about—Luckie—is that an advertising agency in Birmingham? The Luckie Advertising Agency?

A. Yes, sir.

Q. Who is Howard Barney?

A. He is an advertising agency too.

Q. In Mobile, Alabama?

A. Yes, sir.

Q. Who is H. B. Humphray, Allay and Richards?

A. That's an advertising agency in New York.

Q. Well, you have got here, "U.S. Pipe and Foundry, H. B. Humphray, Allay and Richards, Agency."

[fol. 343] A. Yes, sir.

Q. You have the word, "Decision, Alabama and New York." What do you mean by that?

A. Because in our opinion the decision on the placing of the copy is made both in Alabama and in New York.

Q. Where have you received from Messrs. H. B. Humphray, Allay and Richards any order or have had placed with you an order to run that advertising? Where did that come from?

A. New York.

Q. When you referred to a "Decision" in your opinion, do you refer to a decision as to whether or not to run it in your paper by the advertiser?

A. Yes, sir.

Q. You are not talking about any decision of The New York Times, are you?

A. No, sir.

Q. So, actually, when you listed in your memorandum that advertising under Alabama accounts the U.S. Pipe and Foundry account, I will ask you to tell us whether or not that, in fact, did not result from an order placed from Alabama?

A. It did not.

Q. Now, I notice two other items here. You have got "Southern Natural Gas" during 1960 listed on this same exhibit No. 2—

A. Yes, sir.

Q. You have listed here "Southern Natural Gas, Sparrow and DeRamus." What does that mean?

A. Some copy that Southern Natural Gas runs is handled by Sparrow and some is handled by DeRamus. This is the total here of 580 lines and it may be that half of it was placed by DeRamus and half by Sparrow and so we put both of them down.

Q. Who is DeRamus?

A. DeRamus is a financial advertising agency in New York.

Q. Now, there is one other item I noticed on the memorandum in that regard. You have one other listed here as "Avondale Mills, N.W. Ayar," and they are listed as Alabama and New York.

[fol. 344] A. Yes, sir.

Q. What do you mean by that?

A. We included the 4,250 lines of Avondale on this report because the advertising agency for Avondale Mills is located in New York and Philadelphia and the New

York office also works on the account but the home office of Avondale Mills is here in Alabama and so we included them both.

Q. So, actually, that memorandum does not—I will ask you to tell His Honor if this is correct or not. The memorandum does not reflect that contract or orders for advertising were made by Alabama agencies in all of these instances, does it?

A. No. There are one, two, three—there are three instances here that you have just gone over.

Q. Now, you have listed on Defendants' Exhibit No. 2, without repeating where an agency appears more than once, the following separate agencies, Howard Barnay who you listed as being located in Mobile, Alabama. You also have the Sparrow Advertising Agency in Birmingham and H. B. Humphray, Allay and Richards which I believe you said were located in New York?

A. Yes, sir.

Q. Also the Luckie Advertising Agency located in Birmingham.

A. Yes, sir.

Q. You have some listed where there is no agency.

A. Yes, sir.

Q. Also N.W. Ayar in New York.

A. N.W. Ayar at their branch office in New York and they have their home office in Philadelphia.

Q. All right. Now, are those independent concerns of independent advertising agencies?

A. Yes, sir.

Q. Do you have any control or did you during the year 1959 and 1960—did you, The New York Times Company, exercise or have any control over those agencies with respect to the manner in which they conducted their business?

[fol. 345] A. No, sir.

Q. Now, during this period of 1959 and thus far into 1960, you have given us comparative figures with respect to the lineage of advertising which has emanated from these—which you have on your memorandum, Defendants' Exhibit No. 2, in Alabama and nationally—a comparison between that—

A. A total.
Q. A total?
A. Yes, sir.
Q. Is the dollar volume of the compensation paid to The New York Times Company by these agencies and advertisers for the running of this advertisement also a comparatively infinitesmaly small amount of the total dollar value revenue from the advertising nationally?

Mr. Nachman: We object to that question, Your Honor. We object to the comparison. The figures would speak for themselves and he can ask the witness the figures he has with regard to the lineage.

By Mr. T. Eric Embry: (Continuing)

Q. With respect to the dollar volume, would you be more familiar with that or would the gentleman from the Comptroller's office be more familiar with it?
A. The gentleman from the Comptroller's would be more familiar with the dollar allotment.
Q. Now, how is the New York Times Company paid by the advertiser when you have accepted the advertising and have run it in your newspaper? By what method or means are you paid for the performance of that service in New York?
A. Well, if the account is direct we send the accounted bill usually at the end of the month if they have any kind of a contract with us. If it is a one-time or two-time advertiser they usually get a bill within a matter of fifteen days and they send us a check. In the case of recognized advertising agencies, they get monthly bills and we send them to the advertising agency usually by the 10th or the 15th of the month following publication. We send them a [fol. 346] bill for any advertising they have placed on behalf of their client or clients and we send those bills to the agencies involved and we discount their bills fifteen per cent.
Q. Then, do I understand from your testimony that you have a different rate which you charge for advertising which is applicable to an advertiser who places his advertising directly with you than that rate which you apply in

billing an advertiser or billing an agency for the placing of advertising through that agency with you?

A. Yes. We do.

Q. What is the difference in the rate you charge as reflected by the bills you send in the case of a direct advertiser as contrasted with an agency?

A. The bill that we send to a direct advertiser is for the gross amount as stipulated in our publication rate card.

Q. You have a series of rates that you publish for the information of those interested in it?

A. Yes, sir.

Q. With respect to advertising?

A. Yes, sir.

Q. And classified according to the kind of advertising, the amount, the volume and that sort of thing affects the amount?

A. Yes, sir.

Q. Did I understand you to say that you bill the direct advertiser at that full rate?

A. Yes, sir.

Q. And you bill the agencies or what you call the recognized agencies—

A. Yes, sir. They have to be recognized advertising agencies.

Q. You bill them at that rate less fifteen per cent.

A. Yes, sir.

Q. Tell His Honor whether you ever send any money or any check for money or negotiable paper or payment of any kind to any advertiser in Alabama and whether you have done it in 1959 or 1960? Have you ever paid any advertising agency in Alabama any money during any of those two years by sending them a check for it?

[fol. 347] A. No. The practice is that we send an advertising agency a bill for eighty-five per cent of the published rate card rate and they the advertising agency will bill their clients at the full rate published in the rate card. As a matter of fact, there might be an exception to that but usually it even works out the same way that if an advertising agency has a ten thousand line contract with us and they find that they use more space than that they get a rebate on it but that would be also applied to our bill.

Q. In other words, are you saying—you still don't send any money, do you?

A. That's right—

Q. You just reflect the change in the billing—

A. Yes, sir.

Q. In the amount that you bill them for?

A. Yes, sir.

Q. Now, is payment made to you for that advertising and was it in the case of those—that advertising which you testified to according to Defendants' Exhibit No. 2 which was placed with you during 1959 and 1960 by advertisers in Alabama—payments sent to you in New York for that?

A. Yes, sir.

Q. When you would bill them?

A. Yes, sir.

Q. And you received the medium of payment, either check or money order or however they were sent, in New York.

A. Yes, sir.

Q. Is there another means by which you receive advertising otherwise than what you have told us about which you referred to as a space order?

A. Yes. The space order would be an order for one or two or three insertions and if the advertiser didn't believe they were going to use enough to warrant their taking out a contract, they would just give us a space order for it.

Q. Are those space orders, and were they during these same years, are they sent to you in New York?

[fol. 348] A. Yes, sir.

Q. Then, do you either accept that order by running the advertisement or running the advertisement or not there in New York?

A. Yes, sir.

Q. Then, do you go through any process which you have described by which you obtain payment for that by billing that individual or billing whoever sends the space order?

A. Yes, sir. We go through the same process.

Q. Now, I may have asked you about this but in asking you about the type or lead I may have been too restrictive in the matter. Where are the activities concerning the printing and composing of advertising performed? That is really the question I should have asked you.

A. Where are they?

Q. Yes.

A. In New York.

The Court: Let me ask you this question. Suppose the Sparrow Advertising Agency sent you an ad from Birmingham and you accepted it and you ran the ad, where and how would you get paid? Would you send a bill or what would you do?

The Witness: Yes, sir.

The Court: Would you send the bill to the Sparrow people or to the advertiser?

The Witness: If it came from Sparrow, we would bill Sparrow.

The Court: Your dealings would be largely with him?

The Witness: Yes, sir.

The Court: Then he would collect it from the other fellow.

The Witness: Yes, sir.

Mr. Embry: If the Court please, I don't have any further questions for this witness but I do want to point out to your Honor that by examining him with respect to 1959 and by asking our prior witness questions relative to the period of time before 1960, I don't mean to waive our objections—

[fol. 349] The Court: Oh, no. I understand that.

Mr. Embry: We still contend, Your Honor, that that period is not relevant.

The Court: Yes. Go ahead.

Mr. Embry: That's all we have for Mr. Wagner, Your Honor.

Cross examination.

By Mr. M. R. Nachman, Jr.:

Q. Mr. Wagner, the revenues from advertising are quite important to The New York Times Company, are they not, sir?

A. Yes, sir.

Q. Do you happen to know, sir, approximately what percentage of the total revenue of The New York Times Company was, let's say for 1959 or do you have any figures for any portion of 1960—what percentage was derived

from advertising as distinguished from other sources of revenue?

A. I have just a vague idea on that.

Q. Could you give us a rough approximation of the percentage?

A. I would say about seventy per cent. I would say between seventy and seventy-five per cent. You are talking about a total now. Is that right?

Q. Yes. You would say from seventy to seventy-five per cent from advertising?

A. Yes, sir.

Q. And the rest of the revenue comes from other sources.

A. Yes, sir.

Q. Does The New York Times spend a considerable amount of money in the solicitation of advertising?

Mr. Embry: We object to that unless it is predicated on what is or is not spent in Alabama or some definite period of time.

The Court: Yes.

Mr. Nachman: I will limit it to Alabama then.

[fol. 350]

NEW YORK TIMES COMPANY ASSIGNMENT OF ADDITIONAL GROUNDS OF OBJECTIONS

Mr. Embry: Under the stipulation and agreements had throughout the hearing on the Motion to Quash in the L. B. Sullivan case wherein it was agreed that counsel for The New York Times Company could assign any additional grounds of objections to questions propounded to the various witnesses and to the introduction of documentary evidence that they saw fit to do, such stipulation being for the purpose of saving the Court's time on the original hearing, the defendant, The New York Times Company, wishes to and does assign the following additional grounds of objections. To each objection made originally to questions propounded to the witnesses and the introduction of documentary evidence, that the questions called for a mental operation of the witness and not facts and that the questions called for an answer which does not tend to prove or disprove whether Don McKee and John Chadwick were

agents of The New York Times Company so that purported service upon McKee would constitute valid service upon this defendant. It does not tend to prove whether or not the Times did business in Alabama or whether the cause of action attempted to be stated in the complainant's cause accrued from or was incident to the doing of business or performance of work or service in Alabama by The New York Times Company or its agents, servants or employees and that these same grounds of objection apply to the introduction of the various exhibits offered by the Plaintiff. Further grounds of objection to questions propounded to the various witnesses as well as to the introduction of documentary evidence are that the question and the evidence sought to be adduced by an answer thereto and the documents would not be material or legal evidence such as would authorize a construction by the Court of Section 199 (1) of Title 7, Code of Alabama, 1940, that would permit the Court to assert jurisdiction over the person of The New York Times Company, a corporation, and to admit such evidence for such purpose would be such a misapplication of the law as would deprive this defendant of its property without due process of law in contravention or violation of the Fourteenth Amendment of the Constitution of the United States and in contravention or violation of [fol. 351] Article 1, Section 6, of the Constitution of Alabama, 1901, and would deny to this defendant equal protection of the law in contravention or violation of the Fourteenth Amendment to the Constitution of the United States and would constitute an abridgement of freedom of the press in contravention or violation of the First Amendment to the Constitution of the United States, taken together with the Fourteenth Amendment of the Constitution of the United States and would impose an unreasonable burden upon Inter-State Commerce in contravention or violation of Article I, Section 8 of the Constitution of the United States and such questions and the evidence sought to be adduced therefrom and such documents would be illegal and immaterial as a basis for the Court construing or holding that Don McKee was an agent of this defendant upon whom service of process might be had so as to support a holding by the Court that any purported service upon

him would subject this defendant to the jurisdiction of this Court and the admission of such evidence and the holding on the basis of such evidence that he was an agent so as to subject this defendant to the jurisdiction of this Court would deprive this defendant of its property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States and in violation of Article 1, Section 6 of the Constitution of Alabama, 1901, and would deny to this defendant equal protection of the law in violation of the Fourteenth Amendment of the Constitution of the United States and would abridge freedom of the press in violation of the First Amendment to the Constitution of the United States, taken together with the Fourteenth Amendment of the Constitution of the United States and would impose an unreasonable burden upon Inter-State commerce in violation of Article 1, Section 8, of the Constitution of the United States.

[fol. 352] By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Does it spend much money on the solicitation of advertising from Alabama advertisers and from Alabama advertising agencies?

A. You said, does it spend money. The answer is yes.

Q. Yes, it does.

A. Yes.

Q. For the solicitation from advertisers in Alabama and also from advertising agencies located in Alabama.

A. You are talking about 1959 and 1960 now?

Q. Well, you may restrict your answer to those years if you like.

A. Yes, sir.

Q. And did it in the years prior to 1959, let's say 1960 up to the present time—I beg your pardon, 1956. From 1956 up to the present time.

Mr. Embry: We object to that question on the same grounds previously assigned, Your Honor. It is incompetent, irrelevant and immaterial and too remote in point of time—

The Court: Yes. Overruled. You may answer if you can.

The Witness: Yes.

By Mr. M. R. Nachman, Jr.: (Continued)

Q. Would you explain to the Court the corporate relationship of The New York Times Sales Incorporated to The New York Times Company, the defendant in this case? Maybe I should be more specific. Who owns the stock in The New York Times Sales Incorporated? Do you know?

A. The New York Times—I don't know that I am qualified to answer that question.

Q. You don't know?

A. No. You are talking about the corporate set-up?

Q. I am talking about the stock ownership. Do you know who owns the stock in The New York Times Sales Incorporated?

A. So far as I know it is a subsidiary organization.

Q. Wholly owned?

[fol. 353] A. Yes, sir.

Q. By the New York Times Company?

A. Yes, sir.

Q. When was it set up? When did it begin its corporate existence, that is, as The New York Times Sales Incorporated?

A. I believe in 1956 but that's only so far as I know.

Q. Does The New York Times Sales Incorporated solicit advertising for any other publication other than The New York Times Company?

A. No, sir.

Q. Its activities are restricted solely to the solicitation of advertising for The New York Times Company. Is that correct, sir?

A. Yes, sir.

Q. Am I correct too, Mr. Wagner, in saying that the expenses of The—

A. Excuse me. May I change something?

Q. Yes.

A. I think there is some circulation involved—I think there is some circulation activity involved in The New York Times Sales Incorporated.

Q. Well, I am talking about the solicitation of advertising.

A. Yes.

Q. Insofar as that is concerned, it solicits for no publications other than the New York Times. Is that correct, sir?

A. Yes, sir.

Q. Am I correct in stating that its solicitations in Alabama consist of having its representatives, Mr. Hurley and Mr. Monger, come into Alabama and call on prospective advertisers and advertising agencies?

A. Yes, sir.

Q. And to urge those advertisers and advertising agencies to place advertising in The New York Times? Is that correct, sir?

A. Yes, sir.

Q. That is correct, sir?

A. Yes, sir.

Q. Am I also correct, Mr. Wagner, in stating that The New York Times Company actually pays the expenses of Mr. Hurley and Mr. Monger and did so for their solicitation trips into Alabama?

[fol. 354] A. The New York Times Company?

Q. Yes, sir, as distinguished from The New York Times Sales Incorporated.

Mr. Embry: We object to that, Your Honor, unless the question calls for who ultimately paid it or how it was handled—

The Court: Well, he can ask who paid it and you can come back with your questions later.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. You may answer.

A. No. The New York Times Sales Incorporated pays the expenses of the employees of The New York Times Sales Incorporated.

Q. I show you, Mr. Wagner, four exhibits identified by the Reporter as Plaintiff's Exhibits No. 266 through No. 269 and ask you to look at those and ask you whether they do not represent New York Times Advertising Department expense statements for Mr. Hurley and for Mr. Monger for trips into Alabama and whether the department concerned is not listed as the National Advertisement Department of The New York Times Company?

Mr. Embry: Your Honor, we are going to object to this because the question was who paid those expenses. The man who knows about that is here and he can testify. I would like to ask this witness on Voir Dire whether he knows. I would like to ask him how the fiscal affairs in that regard are handled on the books and who is charged with it and who, in fact, pays these expenses?

Mr. Nachman: Your Honor, we—

The Court: Well, if he doesn't know, there wouldn't be any use in asking him. Go ahead and ask him a few questions about it and see if he knows.

By Mr. T. Eric Embry: (Continuing)

Q. Do you know how the fiscal affairs there are handled in that regard between the New York Times Sales Incorporated and The New York Times Company?

A. Yes, I do.

[fol. 355] By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Would you go ahead then and answer my question in regard to these expense accounts, sir?

A. Do you want to give me the question again, please?

Q. The question is whether those documents which I have just handed to you, Exhibits 266 through 269, do not show payment by The New York Times Company of the expenses of Mr. Hurley and Mr. Monger for trips into Alabama during the period stated on the exhibits?

Mr. Embry: We object to that. The Record speaks for itself there.

The Court: I will let it in and give you an exception.

Mr. Embry: We except.

The Witness: These are on forms of The New York Times Advertising Department. The way these are handled —when Hurley or Monger takes a trip, they make out one of our regular expense forms and then all items in connection with that are charged to The New York Times Sales Incorporated account. They have to be authorized first and they are authorized by me—

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. They are authorized by you and—

A. By me and then by the auditing department.

Q. In other words, The New York Times Sales Incorporated pays the expenses which are authorized by you. Is that correct?

A. Yes.

Q. You authorized the expenses and they were paid to the person concerned by The New York Times Company? Is that correct? Then the New York Times Company is reimbursed by The New York Times Sales Incorporated. Is that right? Is that the way it works?

Mr. Embry: That's not what he said.

The Witness: No.

Mr. Nachman: Well, if I am wrong, you can correct me.

The Witness: No. These expenses are—the only reason [fol. 356] they are made out on a regular New York Times expense account form is because we just didn't have any New York Times Sales Incorporated forms made out. We don't get that many of them and so we just didn't have any made out. We do have separate stationery for The New York Times Sales Incorporated but we don't in this particular instance. These are—I don't know what the legal term is but these are actually computed and the dollars involved for The New York Times Sales Incorporated men are charged and paid out of the New York Times Sales Incorporated account.

Mr. Nachman: If the Court please, we offer these four documents into evidence which have been identified as Plaintiff's Exhibits 266, 267, 268 and 269.

(Four New York Times Advertising Department Expense Statements for Thomas M. Hurley and Frank M. Monger, dated January 8th, 1960, December 4th, 1959, October 31st, 1959 and August 21st, 1959, offered and received in evidence and identified as Plaintiff's Exhibits No. 266, No. 267, No. 268 and No. 269.)

Cross examination. (Continued)

By Mr. M. R. Nachman, Jr.:

Q. Isn't it a fact, Mr. Wagner, that you as head of The New York Times Company National Advertising Department supervised the activity of The New York Times Sales Incorporated?

A. I supervised their selling activities, yes.

Q. The selling of advertising?

A. The selling of advertising. Yes, sir.

Q. And the activities of The New York Times Sales Incorporated are under your supervision.

A. Yes, sir.

Q. As the National Advertising Head of The New York Times Company.

[fol. 357] A. Yes, sir.

Q. Is there anybody else other than yourself, Mr. Wagner, who is authorized to approve expense accounts for employees of The New York Times Sales Incorporated?

A. Yes, sir.

Q. Who is that person or persons?

A. Max Faulk. He is our advertising—

Q. Is he an employee of The New York Times Company?

A. Yes, sir.

Q. All right. Anyone else?

A. Monroe Green, our advertising director.

Q. He is also an employee of The New York Times Company?

A. Yes, sir.

Q. Anyone else?

A. No, sir.

Q. Now, returning to Defendants' Exhibit No. 1, this memorandum to you from Mr. Roger Atwood, dated May 13th, 1960, I notice he refers to the time spent by members of "Our Staff". Is Mr. Atwood with The New York Times Company?

A. Yes, sir.

Q. Now I may be incorrect about your testimony but as I recall it you said that no employee of The New York Times Company came into Alabama to solicit advertising in 1960. Was that your testimony?

A. Yes, sir. I think I changed that. I said first that there were two and then I changed it to one, didn't I?

Q. Yes, sir. Now, this memorandum, Defendants' Exhibit No. 1, shows, does it not, that Mr. Sullivan came into Alabama during 1960.

A. No, sir.

Q. It doesn't show that?

A. I don't think so. This is 1959. This is 1960 right here.

Q. Oh, I see. You didn't mean to—you were just restricting it to 1960.

A. I thought that's the question that you asked me.

[fol. 358] Q. Well, I beg your pardon. It was my mistake and I'm sorry. Now, in 1959 Mr. Sullivan and Mr. McCullough came into Alabama, didn't they?

A. Yes, sir.

Q. Is the Mr. Sullivan referred to here Mr. Robert S. Sullivan of The New York Times Company?

A. Yes, sir.

Q. What position does he hold with The New York Times?

A. He is a salesman on our staff.

Q. Sales advertising?

A. Yes, sir.

Q. And he is not employed by The New York Times Sales Incorporated.

A. No, he is with The New York Times.

Q. How about Mr. J. McCullough?

A. He is a salesman on our staff.

Q. On the staff of The New York Times Company?

A. Yes, sir.

Q. I take it that the purpose of their trips into Alabama was to solicit advertising from agencies and advertisers in Alabama.

A. Yes, sir.

Q. Now, when these gentlemen—let's just restrict it to the gentleman listed on that exhibit, Defendants' Exhibit No. 1—when these gentlemen came into Alabama to solicit advertising, did they bring any kind of samples with them?

A. They do on occasions. Yes, sir.

Q. Would you describe what sort of samples they would bring?

A. Well, we may have an idea that we would like to sell to the Board of Mobile for example, a cooperative effort, and we would bring them a rough lay-out of what we had in mind and we would try to interest them in it and try to sell their participation.

Q. Are you familiar with a man by name of Edward T. Kennedy?

A. Yes, sir.

Q. What position, if any, does he hold with The New York Times Company?

A. He is the area development advertising manager for The New York Times.

[fol. 359] Q. Does he solicit advertising in Alabama?

A. No. So far as I know he has—no.

Q. Would you recognize Mr. Kennedy's signature if you saw it?

A. Yes, sir.

Q. Now, Mr. Wagner, I show you a letter dated January 22nd, 1960 addressed to Mayor Earl D. James, Municipality, City of Montgomery, Montgomery, Alabama, and purportedly signed by Edward T. Kennedy. Do you recognize the signature thereon as being Mr. Kennedy's signature?

A. Yes, sir.

Q. He is the Mr. Kennedy we have just been talking about. Is that correct?

A. Yes, sir.

Mr. Embry: Did he say yes?

The Witness: Yes.

Mr. Diana: Where was the letter sent from?

The Witness: New York.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. The letter is on the letterhead of The New York Times Company, is it not?

A. Yes, sir.

Q. Is this an advertising brochure or sample that is used by The New York Times Advertising Department to obtain advertisers of this sort, namely, area development and so forth?

A. Yes, sir.

Mr. Nachman: If the Court please, we offer into evidence the letter and the book as our next exhibits.

Mr. Embry: Your Honor, we can get pretty remote in offering evidence but a letter written from New York City to a Mayor in a City of Alabama—to contend that that indicates activity in the State of Alabama by The New York Times Company, a corporation, is really getting more remote than I have ever encountered—

Mr. Nachman: We are going to tie it up right now, Your Honor. We are going to tie it in with another letter.

[fol. 360] The Court: Well, I will give him a chance to tie it up and if he doesn't we will throw it out—

Mr. Embry: We object to it, Your Honor, on the grounds that—

The Court: I will let it in subject to it being connected up.

Mr. Embry: It is incompetent, irrelevant and immaterial and sheds no light on the activities of the defendant corporation within the State of Alabama and shows on its face that it was sent in to the State of Alabama by United States mail and it has no evidentiary value with respect to whether or not this defendant was doing business in the State of Alabama at or about the time of this purported service of process on it in April of 1960 or within a reasonable length of time before or after that date or at the time the letter and accompanying brochure purports to have come into the City of Montgomery to Mayor Earl D. James in January of 1960 by United States mail.

The Court: I will let it in for the present subject to its being connected up.

Mr. Embry: We except, Your Honor.

By Mr. M. B. Nachman, Jr.: (Continuing)

Q. Now, I show you another letter, Mr. Wagner, dated July 14th, 1960 and I call your attention to the signature thereon and ask you whether or not you recognize that signature as being the signature of the same Edward G. Kennedy?

Mr. Embry: Don't answer that question, please, sir. Your Honor, we object to an inquiry about anything whether

relevant or irrelevant in July of 1960, after this litigation has begun. It is incompetent, irrelevant and immaterial and cannot possibly shed any light on the issues before Your Honor in this inquiry with respect to the jurisdiction of Your Honor over this defendant or on the activities of this defendant indicating whether or not this defendant corporation was doing business at or about the time of service or a reasonable length of time before or after.

[fol. 361] Mr. Nachman: Now, Your Honor, the objection to the former letter was that it wasn't connected up with any activity other than mailing something in. This letter —the first paragraph of this letter dated July 14th, 1960 reads, "Some time ago you wrote for information about attracting industry to your city, county, State or region. We were pleased to send you a copy of the book, "Area Development Promotion or Progress and Prosperity." That book referred to is the book we have just introduced. Now, that referred to this paragraph in this letter of July 14th, 1960 which reads as follows: "We would very much appreciate an opportunity for our representative to call on you at your convenience to present this material, to discuss the specific possibilities of your area and to supply any further information you may require." So, Your Honor, this initial mailing was to be followed up according to the intention of The New York Times by a visit from a representative of The New York Times according to this letter which we now introduce. It is definitely connected with the prior matter and we offer it into evidence for that purpose, Your Honor.

The Court: Well, what is the date of this first letter?

Mr. Nachman: That letter is dated January 22nd, 1960, Your Honor.

The Court: Let me see it. Now, according to this letter it looks like the Mayor wrote up there though.

Mr. Embry: That's correct, Your Honor.

The Court: It says, "We are pleased to send you the requested copy of the book." Does that indicate that he wrote that?

Mr. Embry: Yes, Your Honor.

The Court: All right. Now, let me see the second letter dated July 14th, 1960.

Mr. Nachman: Your Honor, I don't know whether this is the appropriate time to put Mr. James on the Stand but it is our understanding that he did not write soliciting the brochure or the information but we will put it on when—

Mr. Embry: Your Honor,—

[fol. 362] The Court: Well, suppose an agent of The Times came down here or a representative of The Times came down here in response to these two letters, what would these two letters show?

Mr. Nachman: They would show, Your Honor, that The Times is anxious to send a personal representative into Alabama in order to—

The Court: Well, they may have had the intention of sending a man down here but he never got here—

Mr. Nachman: Because, Your Honor, this is part of the business they do and Mr. Wagner has testified that seventy to seventy-five per cent of the revenues of The New York Times are obtained from advertising and we submit that this is a clear attempt—

The Court: Well, wouldn't it be protected by the Interstate Commerce laws—

Mr. Nachman: Your Honor, the cases are clear that a foreign corporation cannot avoid suit in a State by claiming it does business in Interstate Commerce. The question is whether it has sufficient contacts with the State to make it subject to suit there—

Mr. Baker: Your Honor, the International Harvester case—

Mr. Nachman: It is just a question again of the business they do in Alabama and we submit when they express a willingness to send a personal representative into Montgomery to discuss with the Mayor an advertising brochure—

The Court: Well, is that doing business or the expression of a wishful desire to do business?

Mr. Nachman: We think it is a wishful desire to do business and it is a solicitation of business in the State by a representative or employee of The New York Times Company.

The Court: Do you have something to say, Mr. Baker?

Mr. Baker: I just want to call Your Honor's attention to International Harvester against Kentucky, where every-

thing that was done was in Interstate Commerce and the Supreme Court of the United States held that if it was substantial enough it constituted doing business in Ken-[fol. 363] tucky.

Mr. Nachman: As recently as this term, Your Honor, in Scripto against Carson where the materials were sold from the State of Georgia to the State of Florida and there was a question as to whether Florida could make collectors out of a non-resident corporate defendant—

The Court: Your idea would be that no agent or representative of the company would have to come into the State?

Mr. Nachman: It is our idea, simply, Your Honor, that this is evidence of the fact that the Times in order to get business, advertising business in Alabama, is willing as it says in this letter to send—

The Court: Well, was that sent to the Mayor from New York or what?

The Witness: From New York. Yes, sir.

Mr. Nachman: As I say, Your Honor, while this is not the appropriate time for us to put on our evidence, it is our understanding from Mr. James that he did not write asking for that material.

The Court: Mr. Embry?

Mr. Embry: Your Honor, I would like to point out that, of course, there is no question of Interstate Commerce being involved. The matter on its face shows it was dispatched by mail from New York City. It doesn't shed any light on anything done in Alabama. That's the question before Your Honor. The question is what may or may not have been done in Alabama—activity in Alabama. Contact in Alabama, Your Honor. There is no case in the history of this country that has ever held that the writing of a letter or that the forwarding of a piece of written material into a State by mail reflects any activity in the State of Alabama by any representative of this corporate defendant. That is absurd, Your Honor.

Mr. Nachman: What about McGee versus The International Insurance Company—

Mr. Embry: Well, he is citing cases, Your Honor, and I am familiar with some of those cases. The questions before

those Courts are not the questions we are dealing with [fol. 364] before this Court. This insurance case he is talking about calls for contracts in the writing of insurance and insurance contracts and whether or not that outfit was doing business when they wrote those contracts in the State. We are not concerned with that. We are concerned with one little piece of evidence and whether it is admissible and whether it sheds any light on the activities of this corporate defendant as to whether it was doing business in the State of Alabama and it is objectionable from five or six standpoints. For one thing, the time which it was sent here makes it objectionable. For aught appearing it was sent at the request—it was sent in response to a request for doing something connected with this litigation—there is no evidence to the contrary before the Court. There is nothing in the content of the letter except to show to Your Honor without peradventure of a doubt that it was sent by mail to the recipient, Mayor James, and if any inference can be drawn from it it shows that no representative of The New York Times came or was in Alabama in connection with this piece of evidence. I don't know how to state it otherwise. It just has no evidentiary value except to build up a bulky record and to encumber the Record without having any probative force whatsoever.

Mr. Nachman: It shows, Your Honor, that a representative of The Times was ready, willing and able—

The Court: Well, ready, willing and able but he never got here—

Mr. Nachman: And that he was anxious to come in order to show this material to Mayor James in an effort to try to sell some advertising to the City of Montgomery and it shows a constant course of advertising solicitation by the Times in this State in order to sell advertising as Mr. Wagner has stated from the Stand. He said that was part of their business that they spent money soliciting advertising in Alabama and that they are anxious to sell advertising in Alabama because it increases their business.

The Court: Well, suppose in response to this the agent or representative came down here after the suit was filed. Where would you be then?

[fol. 365] Mr. Nachman: Well, Your Honor, we disagree with Mr. Embry on the cut-off dates. We know that Your Honor does not wish to hear the final arguments at this point. We think that the question of what is relevant and important is whether or not there is a course of conduct in a foreign State by a foreign corporation so that Alabama can say that this corporation has sufficient contacts in Alabama—the minimal contacts to use the language of the cases—so as to make it fair to subject that corporation to suit in Alabama. That, as we understand it, is the issue on doing business point. Now, we don't think that he can cut this off at a date where there has been a continuous course by this defendant namely, in this case—

The Court: Well, I wasn't asking that question to irritate you or to—

Mr. Nachman: I understand, Your Honor. That is the overall theory that we are presenting to you and we think that it is part of a pattern—

The Court: Can you do business in a State by sending a couple of letters and a book?

Mr. Nachman: We say, Your Honor, as I have just pointed out that this is a part of a course of conduct or an attempt to gain advertising by sending solicitors in asking to have another solicitor come in. We have already obtained testimony to the effect that solicitors did come in to Alabama in an attempt to sell advertising in the State and we present this as another part of that overall course of business.

Mr. Embry: Your Honor, that's nearly three months after this litigation was instituted.

Mr. Nachman: Well, it ties in with the other, Your Honor. If it had originated in July, I think there might be some question but it ties in and it ties in with the event that took place in January.

The Court: Well, it looks like there was some correspondence but there were no salesmen coming in here. I don't think this is admissible. Let me give you an exception.

Mr. Nachman: Your Honor, I don't want to impose upon the Court's time but would it have any bearing on the [fol. 366] Court's ruling if I were to ask this witness if it were a part of a course of conduct—

The Court: You may ask him that question but I don't know whether the Court would change its mind or not. Go ahead and ask the question if you wish.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Wagner, you have heard the discussion between Court and counsel. Is it part of the advertising solicitation plan and activity of The New York Times Company to send such brochures to municipal officials and to send representatives in to show them an advertising display in an attempt to obtain such advertising as this for The New York Times?

Mr. Embry: Just a minute. Don't answer that. We object to that, Your Honor, because it is not predicated what in fact was done during any particular period of time or at any particular place. Therefore, it is not evidential as to what may or may not have been done by—

The Court: Well, I don't know what he is going to say because I cannot read his mind but the Court is still disturbed over the fact that no agent came here. Let me stand by my ruling.

Mr. Nachman: All right, Your Honor. May we make a showing on these documents I have offered into evidence?

Mr. Beddow: We have an exception, if the Court please?

The Court: Yes.

Mr. Nachman: We wish to make a showing for the Record of Plaintiff's Exhibit No. 270, 271 and 272.

The Court: All right. Go ahead.

(Letter, The New York Times, to Mayor Earl D. James, Montgomery, Alabama, signed Edward T. Kennedy, dated January 22nd, 1960, offered in evidence but disallowed and excluded by the Court and offered for a showing and identified as Plaintiff's Exhibit No. 270.)

[fol. 367] (Letter, The New York Times, to Hon. Earl D. James, Montgomery, Alabama from Edward T. Kennedy, dated July 14, 1960, offered in evidence but disallowed and excluded by the Court and offered for a showing and identified as Plaintiff's Exhibit No. 271.)

(Book, The New York Times, entitled "Area Development Promotion for Progress and Prosperity," offered in evidence but disallowed and excluded by the Court and offered for a showing and identified as Plaintiff's Exhibit No. 272.)

Mr. Nachman: Now, Your Honor, we have been going through a series of exhibits which have been previously identified as Plaintiff's Exhibits 240 through 265 and they all contain advertisements placed by Alabama advertisers or Alabama advertising agencies. Am I correct, Mr. Wagner? You have gone over these documents here, have you not?

Mr. Embry: I am going to have to disagree with that, Mr. Nachman. The only thing that we could say in a general statement is that each of these have ads appearing in them which relate to something in Alabama and if you are going to offer them I am going to object to them and set out my grounds—

Mr. Nachman: Yes, you may go ahead but I just wanted to establish identification, if the Court please.

The Court: Go ahead.

Mr. Nachman: Have you been over these at an earlier time, Mr. Wagner?

The Witness: Yes, sir.

Mr. Nachman: You have looked over these exhibits?

The Witness: Yes, sir.

[fol. 368] Mr. Nachman: Do all of these exhibits contain ads placed by Alabama advertisers either directly or through Alabama advertising agencies in The New York Times?

The Witness: Yes, sir.

Mr. Nachman: We would like to introduce these, Your Honor numbered from 240 to 265.

Mr. Embry: After Your Honor has looked them over and studied them we would like to take a little time to state our grounds of objection.

(Court examines Plaintiff's Exhibits 240 through 265.)

Mr. Embry: As to those exhibits which he has just offered numbered 240 through 265 consecutively, Your Honor,

we have numerous grounds of objections. Those consist of photostatic copies of pages of issues of The New York Times newspaper. Those exhibits which he has offered into evidence embrace pages from issues of that newspaper extending for a period of time from the 1st day of January, or embraced in this period, from January, 1956 through April 13th, 1960 and possibly some of them are later than that but the motion to produce under which they were brought here is an accurate delineation of the period of time. Each of those pages are photostatic copies of pages of that newspaper which are being offered here as exhibits into evidence. They contain various advertisements as Your Honor has sampled by looking at a couple of them and, of course, Your Honor will look at all of them eventually. None of those advertisements contained in that newspaper contain any facts or recite any information—

Mr. Baker: Excuse me for interrupting but perhaps Mr. Embry doesn't understand—

Mr. Embry: What?

Mr. Baker: We are perfectly willing to limit them to just the Alabama ads. We don't care to—

Mr. Embry: Well, I am objecting to that—

Mr. Baker: Well, we are offering them only as to the Alabama ads.

[fol. 369] Mr. Embry: Well, I understand that to be true and I didn't mean to object to any of the other ads because I am not concerned with those. The statement I was going to make ultimately would have ended by referring to the ads he has referred to in these various sheets of paper and I think that what I was stating to Your Honor was that none of those ads which are made apparent to Your Honor from each of the pages of the exhibits in any wise relate to Alabama either by reference to the announcement or the sale or of an item of commodity or—

The Court: Well, what about the Birmingham ad of 100.

Mr. Embry: The Committee of 100. We will take that as illustrative of that fact. They do not contain any content or recitation of any facts which shed any light or have any probative force on the question of whether the defendant corporation was active and doing business or not or whether it was in fact doing any business or not during any of this

period of time that I have already delineated to Your Honor for those four and one-half years. The fact that such an ad appears there is of no value as evidence in proving or disproving to Your Honor on the question before Your Honor on the grounds of the Motion to Quash among which are the grounds and the question naturally growing from that of whether this defendant corporation has done any business or is doing any business and, more particularly, whether it was doing any business in Alabama so as to subject itself to the jurisdiction of this Court at or about the time of the service of the summons of process upon it in April of 1960. In line with that outline of our contention to Your Honor—of course, another ground of objection is that by virtue of that those particular and separate and several pages of paper with that ad in it is immaterial, incompetent and irrelevant because of the reasons I have outlined. Another ground of objection is that insofar as any of those issues of the paper have ads contained in them from an issue of the paper which appeared at any time other than a time right around the 21st and 26th day of April, 1960, when the service was purported to be had—then in that respect they are too remote in point of time to be of evidentiary value on the question of whether this [fol. 370] defendant corporation was doing business in fact and or about the time of April 21st to April 26th, 1960. They are not calculated either separately or severally, in toto or piece by piece—those ads nor the contents of the ads—they are not calculated to either be evidence contrary to the grounds and averments or allegations of the Motion to Quash or in support of it. They have no value as evidence either in support of or contrary to these grounds of this Motion to Quash. We feel that their not having any evidentiary value, the offer of those exhibits into evidence can do no more than to encumber the Record to the extent of placing a great bulk of paper material in the Record and Your Honor having it in the Record will have nothing more before him than he had before same gets into the Record which will shed any light on the issues in this case. If I may be allowed to pause for a minute, Your Honor, I would like to check with my associate counsel to see if they have any other grounds that I haven't stated for the Record that they would want me to state for the Record.

The Court: Go ahead.

Mr. Embry: Now, as I understand it, Mr. Nachman, these objections I have made apply to each of these separately and severally and we had an understanding on the other series of exhibits—

Mr. Nachman: Yes, surely.

The Court: Well, you have an objection to each aspect of these pages—

Mr. Embry: That if the occasion demanded it and if there was a request for a transcript that under our agreement that we had previously we have the same agreement that my objections would appear by each item separately.

Mr. Nachman: Well, that's our understanding and all of these fall into a common category.

Mr. Embry: And if we chose to they could be put in physically by each and now I want to add one more ground and it may be that I didn't state it to you clearly. Now, the appearance of that ad under the testimony of this and another witness in each of these separate sheets in each of the issues of these separate papers would not be any [fol. 371] evidence and it would not shed any light on whether or not the ad appeared in this newspaper as a result of someone like Mayor James requesting that an ad be run or whether it was done as a result of any activity in Alabama by any representative of The New York Times or by anyone acting in its behalf. I think that is probably one of the strongest objections to them. It fails to shed any light on that question. Just looking at the ad in its ultimate appearance in the paper doesn't indicate whether it is simply as a result of a desire on the part of an advertiser or an advertising agency that sent the ad to the newspaper and placed it in the New York Times and whether Mr. Wagner came down here and asked these people to put an ad in The New York Times newspaper.

Mr. Nachman: Your Honor, I will be very brief. Now, as to the question of time, Your Honor has ruled over and over again on that point but it is amazing to me that these gentlemen put on a witness because he is their witness and not ours—they spent a considerable amount of time asking this witness how ads get to The New York Times from Alabama and where the ads were composed and who makes

up the format and who puts the lead in the linotype machine and how the ads get there and how they are paid for and they go through all the rest of this process and then, Your Honor, when we put the ads themselves in, the actual finished product, the imprint on the newspaper which is the end product of all the matters they asked this witness about and then they turn around and say that it has no probative value in this case whatsoever and sheds no light on the issues involved. We think that these end products of all the questions they asked this witness about have a very clear probative value in this case and we respectfully urge that they be admitted into evidence.

The Court: I believe they are inadmissible. Let me give you an exception on each ruling on each ad.

Mr. Embry: All right, Your Honor. We would like to except and if it is agreeable with opposing counsel we want the exception to apply to the ruling and we want the exception to apply to each individual exhibit.

[fol. 372] Mr. Beddow: Now, Your Honor, do I understand that the agreement had heretofore that when we made an objection unless we wanted to assign special and additional grounds and other grounds that we would have all the other grounds that we had heretofore assigned the same as though we assigned them separately and severally to each separate and several exhibit?

The Court: Well, you put the Court on notice that you excepted and I think that will be all right.

Mr. Nachman: We would certainly stipulate that, Your Honor. We had that agreement all along and it certainly applies throughout the hearing so far as we are concerned.

Mr. Beddow: All right, Your Honor. We just wanted to be certain that we had that agreement clearly understood.

The Court: All right. Go ahead.

(Twenty-five pages of The New York Times newspaper of various dates containing Alabama ads, offered and received in evidence and identified as Plaintiff's Exhibits 240 through and including 265.)

Mr. Nachman: Your Honor, now we have a series of advertisements which are called an Alabama supplement which

was published on February 2nd, 1958, I believe. We have gone over these ads with Mr. Wagner and opposing counsel and have agreed that there are certain ads in this Supplement which should not be considered by the Court because they did not originate from any Alabama transactions. Those are ads for the Seaboard Air Lines Railroad Company, Lumber Fabricators, G. M. & O. Railroad Company, Olen Company, Chem-Strand, North Alabama Associates, L & N Railroad, J. W. Galbraith and Southern Industries Corporation. Did I leave any out, Mr. Wagner?

The Witness: No, I think you have covered it.

Mr. Nachman: Now, there are several pages in this [fol. 373] exhibit which I will offer as one exhibit to be identified as Plaintiff's Exhibit No. 273.

Mr. Embry: Of course, Your Honor, by agreement we have eliminated some of those but we object to all the rest of that exhibit on the same grounds previously assigned to the preceding exhibits 240 through 265, separately and severally.

The Court: Are these the Alabama Supplement?

The Witness: Yes, sir.

(Court examined Plaintiff's Exhibit No. 273.)

The Court: I think they are admissible. I will let them in subject to all legal objections.

Mr. Embry: We except, if the Court please.

(Nine pages of The New York Times newspaper, dated February 2, 1958, designated as The Alabama Supplement, offered and received in evidence and identified as Plaintiff's Exhibit No. 273.)

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Wagner, do you know how much The New York Times received for that ad placed in that Supplement, Exhibit No. 273?

Mr. Embry: Your Honor, we object to that. I don't know whether it is agreeable to counsel but during Mr. Faber's testimony we had an understanding about objections to questions along that line but I would like to assign these grounds in addition if it is agreeable that the other grounds

assigned to the ads be adopted as grounds of objection to this question in addition thereto—

Mr. Nachman: We agree to that.

Mr. Embry: We say that the amount of money paid for this ad in February of 1958 is incompetent, irrelevant and immaterial evidence on the question of the activity of this defendant during any pertinent period of time of [fol. 374] the inquiry before the Court about doing business and, more particularly, it is too remote from the date of April, 1960.

The Court: I will let it in and give you an exception. It may be a link in the chain even if weak. I will let it in and give you an exception.

Mr. Embry: We except.

The Witness: I would have to guess at it. The rates have changed since then.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Let's see if this will refresh your recollection, Mr. Wagner. I show you two sheets, Mr. Wagner, and call your attention to the initial entry from the Comptroller's office at the bottom of that second sheet and ask you whether that sheet refreshes your recollection as to the amount which was paid to The Times by Alabama advertisers in connection with that Supplement.

A. Well, according to this sheet you have shown me it is $26,801.64.

Q. Are you satisfied in your own mind that that figures is substantially correct, sir?

A. Yes, I think that's about right.

Q. Well, at any rate, you have no disposition to disagree with those figures, do you, sir?

A. No. I do not.

Q. Now, I show you a letter dated September 9th, 1957 which has been identified as Plaintiff's Exhibit No. 274 for identification. Now, this letter consists of three pages and it is dated September 9th, 1957 and is addressed to Mr. Ralph Silver, Birmingham, Alabama and it has a dim signature from someone with The New York Times Company and I show you that signature and ask you if you can identify it where it says, "Assistant National Advertising Manager."

A. I sure do. It is mine.

Q. Your signature?

A. Yes, sir.

[fol. 375] Q. Now, will you look at that letter and tell the Court whether you know of your own knowledge that was sent to the addressee shown on that letter?

A. Yes, it was sent.

Q. What does the letter concern?

A. It concerns—well, do you want me to read it?

Mr. Nachman: Well, we might let the Court read it unless you—

Mr. Embry: Your Honor, there are going to be some objections to the contents and I don't want to interrupt your questioning of the witness but it may be better to offer it into evidence—

Mr. Nachman: All right. I will offer it. I was just trying to save some time.

Mr. Embry: Well, you had better offer it first. I would like to suggest that mode of procedure.

Mr. Nachman: Well, I thought we might identify it a little more fully before we offered it but we can offer it into evidence at this time.

Mr. Embry: Has it been identified?

Mr. Nachman: Yes. It has been identified by date, September 9th, 1957 and marked for identification by the Court Reporter as Plaintiff's Exhibit No. 274.

The Court: Let me see it.

(Court examines Plaintiff's Exhibit No. 274.)

Mr. Embry: If the Court please, we want to object to this letter dated September 9th, 1957 on the grounds that—we would like to adopt all the other grounds previously assigned to the ads separately and severally and the grounds specified in objection to the last question to which we objected which was put to Mr. Wagner which Your Honor will recall. Without stating all the details of my previous objection, it is too remote in point of time from the date of the purported service and the inquiry before the Court.

Mr. Nachman: Of course, Your Honor, it relates directly [fol. 376] to this ad of February 2nd, 1958 which is already in evidence.

Mr. Embry: And we object further on the ground that it only purports to be a letter sent from New York to Alabama.

The Court: I believe the letter is admissible. You may have an exception.

Mr. Embry: We except, if the Court please.

(Three page letter from The New York Times, dated September 9, 1957 to Mr. Ralph Silver, Birmingham, Alabama, from Joseph B. Wagner, offered and received in evidence and identified as Plaintiff's Exhibit No. 274.)

By Mr. M. B. Nachman, Jr.: (Continuing)

Q. Referring now to this letter, Plaintiff's Exhibit No. 274, Mr. Wagner, am I correct in stating, sir, that it indicates that The Times is paying a company in Birmingham to perform certain services in connection with the preparation of the materials which will go into this Alabama Supplement?

Mr. Embry: Don't answer that question. We object, Your Honor. The letter speaks for itself.

Mr. Nachman: I am not asking about the contents of the letter—

Mr. Embry: Well, he is asking what it means and what it indicates.

The Court: Well, it is rather ambiguous phrasing—I will let it in and give you an exception.

Mr. Embry: We except. We further object on the grounds that it invades the province of the Court—

The Court: I will let it in. Go ahead.

Mr. Nachman: You may answer.

The Witness: Briefly, it is a letter that outlines an [fol. 377] agreement we made with Ralph Silver of the Silver News Company for his assistance in connection with the publication of the State of Alabama Section. His assistance was to include furnishing of the advertising reading matter and lay-outs and generally assist in the sale of advertising for the Alabama Section and his coming to

New York to assist us in the final preparation of the dummy to see that it was put together properly. Does that answer your question?

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Yes, sir. Partially. He was to be paid and by he I mean the company—the company was to be paid by The New York Times?

A. Yes, sir.

Q. Have there been any other such occasions during the period from January 1st, 1956 up to the present, Mr. Wagner, where The New York Times had paid for similar services in connection with ads that would appear in The New York Times during this period?

A. You are talking about Alabama?

Q. Yes, sir. Restrict it to Alabama.

A. No, sir. Not that I know of.

Q. That's the only occasion that you can recall?

A. Yes, sir.

Q. I believe you testified that the payment was made to this company for its services as outlined in this letter, did you not?

A. I didn't, but—

Q. Well, I am sorry then, sir. Was it?

A. So far as I know, yes.

Q. So far as you know, it was.

A. Yes, sir.

Q. Am I correct, sir, in stating that you do not have the figures on the revenues on the dollar revenues from the Alabama ads? Did you say on your direct testimony that you could only give the lineage?

A. I have the lineage figures.

Q. Someone else would have to give the rest of these figures?

A. Yes, sir.

[fol. 378] Q. The revenue figures I am talking about.

A. Yes, sir.

Q. Or do you know the revenue figures?

A. No. I would be guessing about that.

Q. Now, I believe you stated that samples are taken into

Alabama by persons who solicit for The New York Times or The New York Times Sales Incorporated, did you not?

A. On occasions they are, yes.

Q. Are there any other materials other than samples which these representatives of The New York Times bring into Alabama in connection with their advertising solicitations?

A. Sales promotional materials and presentations.

Q. In addition to the samples?

A. Yes, sir.

Q. These are shown, I believe you said, to the advertisers themselves or to prospective advertisers as well as agencies such as Sparrow and Luckie and the others.

A. Yes, sir.

Q. Are those materials furnished by The New York Times Company?

A. Yes, sir.

Q. Are they paid for by The New York Times Company?

Mr. Embry: We object to that. He doesn't specify when, Your Honor—

Mr. Nachman: I said by what agents. I thought I specified during the period of January 1st, 1956 and let's say through April, 1960—advertising representatives of The New York Times Sales Incorporated or The New York Times Company such as Mr. Sullivan and the other gentleman listed on Defendant's Exhibit 1. The materials that they brought into Alabama during this period and displayed to prospective advertisers or advertising agencies—were those materials paid for by The New York Times Company?

Mr. Embry: We object to that. There is no evidence that anyone came in here during 1958, 1957 and 1956, and if so, who, and who brought what?

[fol. 379] The Court: I will let it in and give you an exception.

Mr. Embry: We except.

By Mr. M. B. Nachman, Jr.: (Continuing)

Q. You may answer.

A. Whatever was brought in by any of the men you mentioned would have been, yes.

Q. Paid for by The New York Times Company.

A. Yes, sir.

Q. Did representatives of The New York Times come into the State of Alabama during the year 1958 for the purpose of soliciting advertising for The New York Times?

A. Yes, they did.

Q. Did representatives come in during 1957 for that purpose?

Mr. Embry: We object to that as being too remote in point of time, Your Honor.

The Court: I will let it in and give you an exception.

Mr. Embry: We except.

The Witness: Yes. In 1957 they did.

Mr. Nachman: Did they in 1956?

The Witness: No—

Mr. Embry: We object to that as being too remote, Your Honor—

The Court: Same ruling—

Mr. Embry: Well, no. I withdraw that objection. Go ahead and answer.

The Witness: No.

Mr. Nachman: Your Honor, may I take a one minute recess and let the witness look at certain documents and see whether he can testify about them and if not I will not go into the question with him.

The Court: Yes. You may confer for a moment.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Wagner, have you ever turned down an ad from [fol. 380] Alabama? I believe you testified that the acceptance or rejection of same was under your jurisdiction.

A. No. The acceptance of advertising is not under my jurisdiction.

Q. Under whose jurisdiction is it?

Mr. Embry: I think there is some confusion here. May I point out to the witness that acceptability and acceptance —there is a difference there and he is talking about whether you accepted an order for advertising and not whether it was acceptable advertising. Do you follow me, Mr. Wagner?

The Witness: Well, I thought he just asked me had I ever turned down an ad.

Mr. Nachman: I did say that.

The Witness: That's what I understood you to say.

Mr. Nachman: Yes, that was the question.

The Witness: Is that your question now?

Mr. Nachman: Yes. That's my question.

The Witness: It is not my responsibility to accept or reject advertising on the basis of the content of it and when you said did we ever turn down an ad before, that's the way I interpreted it.

By Mr. M. B. Nachman, Jr.: (Continuing)

Q. Under whose jurisdiction is that?

A. That's the advertising acceptability department manager.

Q. Separate from your National Advertising Department.

A. Yes, sir.

Q. Well, let's get down to the orders now, the distinction Mr. Embry just made. Is the acceptance or rejection of the orders for the ads, if there is such a distinction between that and the acceptance of content, I will ask you if that comes under your jurisdiction?

A. Part of it would, yes. Because it also has to be accepted in our credit department and has to be accepted in our production department also. Do you follow me?

Q. Yes, sir. Do you know whether any ads from Alabama have ever been rejected in that sense? I am leaving out the [fol. 381] question of content now which comes under a different department.

A. Not that I know of.

Q. Could you give us the name of the man who was in charge of the advertising acceptability department—

Mr. Embry: Your Honor, we object to that because it is obviously designed to fish for information with respect to the merits of the controversy which is not before the Court on the question of the ads complained of in the Complaint in this cause.

Mr. Nachman: I haven't mentioned any ad. I just asked for the name of the man who is the head of the advertising acceptability department.

Mr. Embry: It cannot have any value as evidence in this inquiry and as I have stated, that could be the only purpose for it—

The Court: Well, I doubt if on a motion of this kind that that would be admissible.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Wagner, do you know anything about the sale of The New York Times microfilm edition in the State of Alabama?

A. No, sir. I don't.

Q. That does not come within your department?

A. No, sir.

Q. Is your department concerned at all with sending out any advertising brochures connected with The New York Times microfilm edition?

A. No, sir.

Q. Would your answer be the same in regard to The New York Times Index?

A. Yes, sir.

Q. Would your department have anything to do with the increase of circulation of The New York Times or the securing of subscribers or news stand space in Alabama?

A. No, sir.

Q. Do you happen to know whether the New York Times has any road circulation men who come into the State of Alabama to promote the sales of newspapers in these States?

[fol. 382] A. No, I wouldn't be in a position to know that.

Q. All right. That's all.

Redirect examination.

By Mr. T. Eric Embry:

Q. Mr. Wagner, you testified about a contract with the Sparrow Advertising Agency—well, two contracts. You specified that one had to do with the State Publicity Department and the other being the Committee of 100 to Birmingham.

A. Yes, sir.

Q. I failed to ask you one question in respect to those contracts. Were they for the sale of advertising space by you to Sparrow for that customer of Sparrows? Was that what the contracts covered?

A. Yes, sir.

Q. All right. That's all.

Mr. Nachman: No further questions.

(At this point Court recessed and reconvened Wednesday, July 27th, 1960.)

Redirect examination. (Continued)

By Mr. T. Eric Embry:

Q. Mr. Wagner, I show you a document marked as Defendants' Exhibit No. 3 for identification and ask you to look at it.

A. Yes, sir.

Mr. Nachman: Your Honor, the document which counsel now proposes to show to the witness relates in some way, and I don't know exactly the extent of the relationship, to the ad that is the subject of this suit, namely, the advertisement charging these matters about the Commissioners and others. We fail to see how this on Re-Direct Examination, and it is being offered in evidence on Re-Direct Examination, has any relationship to any matters that we went into on Cross Examination. Indeed, there was some [fol. 383] overtone and murmur from counsel on some of my questions to the effect that I was attempting to get into that matter and that it was improper for me to do so and as we understand the scope of Re-Direct Examination, it is to go into matters to clarify matters that I went into on Cross Examination, and this is a brand new subject matter that has never been brought out before and we think, Your Honor, that it goes beyond the scope of Re-Direct Examination and we object to it on that ground.

Mr. Embry: Your Honor, the purpose of this evidence, if I can find the summons and Complaint—let's see. I have the wrong one. If the Court please, the summons and Complaint in this case contains an affidavit of Mr. Nachman

wherein he attempts to bring himself under the provisions of Title 7, Section 199 (1), Code of Alabama, 1940, wherein he avers the affidavit in order to attempt to qualify under the provisions of that statute that this cause of action has arisen out of the doing of such business or as an incident thereof by the defendant in the State of Alabama and so forth about appointing the Secretary of State. This document is offered for the purpose simply of showing that the advertisement complained of in the Complaint and sued on, actually contended to be libelous, was bought for and the order for the sale of that advertisement to the advertiser was made in New York City—the contract for that, and there was nothing done about it in the State of Alabama, and that's the only purpose for offering it into evidence, Your Honor.

Mr. Beddow: May I say this, Your Honor?

The Court: Go ahead.

Mr. Beddow: Your Honor, we are not playing a game of chess; we are not playing a game of checkers; we are trying to get the facts before Your Honor. If there were any merit in the objection it would at the worse be discretionary with Your Honor. We couldn't be foreclosed unless Your Honor decided in your discretion that we should in the hurry of things to get along that we should have done a certain thing on Direct Examination. It is discretionary and I am sure Your Honor wants the facts and it won't take but a moment to introduce this particular instrument and that will be all for this witness according [fol. 384] to my recollection of the decision made this morning.

Mr. Nachman: My objection, Your Honor, is not in terms of time and I want to get at the facts just as much as Mr. Beddow does. When I asked questions yesterday about this advertising acceptability committee, I was accused of trying to fish about matters concerning this matter. Now, apparently, there is some realization by counsel for the defendant that they had better go into this matter and so as an after thought they present this now, after Cross Examination is closed.

Mr. Embry: Your Honor, that inquiry yesterday—

The Court: Well, let me say this. It might save time

of eminent counsel here. Of course, I understand the rule but I imagine this matter would be within the sound discretion of the Court and under the exercise of that discretion I will let it in and give you an exception.

Mr. Baker: Your Honor, will we be entitled to go into how the signatures of the Alabama defendants were obtained to that ad?

The Court: Well, let's get to that point when we get to it. Go ahead.

Redirect examination. (Continued)

By Mr. T. Eric Embry:

Q. Mr. Wagner, is this the order or a photostatic copy of the order from the Union Advertising Service of 302 Fifth Avenue, New York City, New York, by which the ad "Heed Their Rising Voices" which was sued on in this case was purchased, that is, the space for the running of this ad was purchased from The New York Times?

A. Yes, sir.

Q. Is the Union Advertising Service to your knowledge located in the City of New York?

A. Yes, sir.

Mr. Embry: We offer this in evidence, if the Court please.

(Court examines Defendants' Exhibit No. 3 for identification.)

[fol. 385] The Court: I will let it in.

(Insertion Order, Union Advertising Service, 302 Fifth Avenue, New York, New York, dated March 28, 1960, offered and received in evidence and identified as Defendants' Exhibit No. 3.)

By Mr. T. Eric Embry: (Continuing)

Q. Is that the means by which the advertiser as is shown on this Defendants' Exhibit 3 purchased the space from your company, The New York Times Company, for the running of that ad by them? The means by which they

purchased the space for the running of that ad by the advertiser?

A. Yes, sir.

Q. Does it show the advertiser to be the National Committee to Defend Martin Luther King, Jr.?

A. Yes, sir.

Q. And that purchase was made in New York City from your company.

A. Yes, sir.

Q. The space.

A. Yes, sir.

Q. All right. That's all.

Recross examination.

By Mr. M. R. Nachman, Jr.:

Q. Mr. Wagner, is this the ad we are talking about?

A. Yes, sir.

Mr. Nachman: If the Court please, we offer this in evidence.

Mr. Embry: If the Court please, we object to that. It is incompetent, irrelevant and immaterial insofar as the purpose for which this document was offered—

[fol. 386] The Court: I will let it in and give you an exception.

Mr. Embry: We except.

(Newspaper ad, The New York Times, Tuesday, March 29, 1960, at page 25, entitled, "Heed Their Rising Voices" offered and received in evidence and identified as Plaintiff's Exhibit No. 275.)

By Mr. M. R. Nachman, Jr.: (Continued)

Q. As I understand your testimony, this ad was placed by The National Committee to Defend Martin Luther King, Jr.

A. The ad was placed by the Union Advertising Service on behalf of their client, The National Committee to Defend Martin Luther King.

Q. Do you know anything about that committee?

A. No, sir.

Q. Specifically, do you know whether it has any members who are residents of the State of Alabama?

A. No, I don't.

Q. Now, did you see this ad when it was placed? I am referring now to Plaintiff's Exhibit No. 275.

A. You mean before it was placed?

Q. Well, at any time in the process of its publication from the time it first got to The New York Times until the time it came out in the newspaper?

A. I saw it when it was in the paper.

Q. After it was printed?

A. Yes, sir.

Q. You never saw it in the form in which it was submitted to The Times?

A. No, sir.

Q. Who is the person who would have seen it in that form?

Mr. Embry: We object to that, if the Court please. We object to that on the same grounds assigned previously. [fol. 387] It goes into the question of merit—

Mr. Nachman: Your Honor, we—

The Court: I will let it in and give you an exception. Go ahead.

Mr. Embry: We except.

Mr. Nachman: You may answer the question.

The Witness: Give me the question again, please.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Who, in The New York Times, would have seen this ad before it went into print?

A. Well, it would have been seen by the production department and by the advertising acceptability department.

Q. Who are the persons in charge of those departments?

Mr. Embry: We object to that question on the same grounds, Your Honor, in that it goes into the question of the truth of the content of the ad and into the merits of the controversy.

Mr. Nachman: We are not going into the question of the truth of the ad, Your Honor, but they say that they can go into the ad because they say they want to show it didn't arise out of anything having to do with Alabama but they say we cannot go into the ad and I don't know why we can't go into it but presumably they think it is a one-way street.

Mr. Embry: He apparently doesn't understand what I—

Mr. Nachman: I certainly don't.

Mr. Embry: Your Honor, the fact of whether or not the contract for the purchase of space was made in Alabama or New York is material evidence under the question of the averment or affidavit about the cause of action having accrued from the doing of work or business or the performance of a service in the State of Alabama but the content of the ad itself, who signed it and that sort of thing, has nothing whatsoever to do with it.

Mr. Nachman: Well, whether or not any Alabama activity went into the obtaining of this ad, Your Honor, is of course—

[fol. 388] The Court: I don't believe that is material and I will give you an exception to the Court's ruling. Go ahead.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Wagner, do you know how the signature Ralph D. Abernathy of Montgomery, Alabama, was obtained on this ad?

A. No, I don't.

Q. Do you know whether or not it was obtained?

A. No, I don't.

Q. Do you know whether the signature of Fred L. Shuttlesworth of Birmingham, Alabama was obtained on this ad?

A. No.

Q. Do you know whether the ad was shown to him before publication?

A. No, I don't.

Q. Do you know whether the signature of the Rev. S. Seay of Montgomery, Alabama was obtained on this ad before publication?

A. No.

Q. Do you know whether in fact it was or whether it was not?

A. No, I don't.

Q. Do you know whether or not it was ever shown to the Rev. S. S. Seay, Sr.?

A. No, I don't.

Q. How about the Rev. J. Lowery of Mobile, Alabama? Would your answer be the same?

A. The same. Yes.

Q. Do you know whether The New York Times undertook any activity by way of checking the material contained in this ad, and if so, whether they consulted anyone in Alabama or whether they undertook any activity at all in Alabama to check the correctness of the matter contained in this ad?

Mr. Embry: We object to that. That's going into—

Mr. Nachman: Alabama activities—

The Court: I don't think that's admissible. Let me give you an exception.

[fol. 389] Mr. Embry: Part of his question may have been, Your Honor, insofar as was there any activity in and about the procurement of the ad in Alabama but he added to that question about checking the contents of the ad and so forth. He added that to his question.

The Court: Well, I understood the question was did any agent of this company come down here to have a talk with these people to get them to sign or something like that?

Mr. Nachman: Mr. Wagner, do you know whether the Times engaged in any activity in Alabama to check into any of the matters contained in this ad?

Mr. Embry: Your Honor, we object to the part about checking into the matters contained in the ad.

The Court: That would sort of go into the merit I believe.

Mr. Nachman: Your Honor, we are trying to—they say that this ad had nothing to do with any conduct in Alabama. Now, they have got an advertising acceptability committee in this newspaper. What I am trying to find out is whether the newspaper other than Mr. Wagner's department en-

gaged in any activity in Alabama in connection with this ad, The New York Times newspaper is not limited to Mr. Wagner's department. That was the point I was trying to bring out, Your Honor.

The Court: Well, I will give you an exception. He may answer if he knows.

The Witness: Will you ask the question again?

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. What activity, if any, did The New York Times—any department of it—anybody connected with it—engage in to check the matters, content, signatures or any matters, contained in this ad which is in evidence as Plaintiff's Exhibit No. 275.

A. I don't know.

Q. Doesn't The Times have a regular procedure for checking into ads which are placed?

A. Yes, sir.

[fol. 390] Mr. Embry: We object to that. Don't answer that. We move that his answer be excluded, if the Court please. That goes into the question of the truth of the contents—

The Court: Well, suppose they checked around here in Alabama. Would that be activity in the State?

Mr. Embry: He asked if they checked the contents of the ad, Your Honor. That goes into the question of the truth of the contents which is not involved at this time, Your Honor.

Mr. Nachman: I am not trying to establish whether or not they knew it was true or false but if they engaged in activity in Alabama to—

The Court: Well, I am willing to let you ask the question and if you can show it then you can show it. You may show if there was any investigation or checking or anything like that. Go ahead.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Your answer to the last question was, yes. The Times does have a regular procedure for checking ads, is that correct?

A. Yes, sir.

Q. Now, what does that regular procedure consist of?

Mr. Embry: We object to that, Your Honor.

The Court: I will let it in and give you an exception.

Mr. Embry: We except. We offer to show, Your Honor, that when he asked about the procedure that the procedure is with reference to the truth of the contents of the advertising or if from the standpoint of pornography or bad taste or—

Mr. Nachman: Your Honor, we object. This is my Cross Examination and he has an opportunity to—

The Court: Well, he has a right to make his objection. I will let the question in if you can show any activity in regard to that ad here in Alabama. Go ahead. You have an exception.

Mr. Embry: We except.

[fol. 391] By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Go ahead. Explain the regular procedure the New York Times had for checking ads.

Mr. Embry: We object to that, Your Honor. It hasn't been shown that this witness knows what this procedure is.

The Court: Well, he can say he doesn't know.

The Witness: The regular procedure is for our advertising acceptability department to check the copy. I don't know the details of how they check it to answer your question. They have been doing this for some time I understand and this is their complete responsibility.

Mr. Nachman: They do it rather carefully, don't they, Mr. Wagner?

Mr. Embry: We object to that, if the Court please. It hasn't been shown that he knows what they do and he said—

The Court: He said he didn't know much about it and he didn't know the details of how it was done.

Mr. Nachman: You don't know whether they do it carefully or not, Mr. Wagner?

Mr. Embry: We object to that, if the Court please. It is argumentative.

The Court: I sustain the objection.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Have you ever had anything to do with the advertising acceptability department of The New York Times?

A. I was never in that department.

Q. Have you ever worked with that department in such a way as to become familiar in some degree with their procedures?

A. No. I—no. The answer is no.

Q. So, you are not in a position to say that no activity in Alabama was undertaken by The New York Times in the matter of checking this ad before publication.

Mr. Embry: Don't answer that. That pure argument, Your Honor.

[fol. 392] The Court: Yes. I think the question is bad. I sustain the objection.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. You cannot state then, as I understand your testimony, what investigation, if any, was undertaken by The Times in connection with checking the content or the signatures on this ad. Is that your testimony, sir?

Mr. Beddow: Now, Your Honor, we are going to object to a useless repetition of testimony. He has asked that question over and over again—

The Court: I am willing to let you ask one more time about the signatures but it seems to me he has answered that.

Mr. Beddow: The first answer, Your Honor, was to the effect—

The Court: I have ruled with you, you see. You might make me change my mind.

Mr. Beddow: I want to call Your Honor's attention to one thing. This gentleman's first answer covered the whole thing. He said he didn't see it until it was in the paper.

The Court: I have ruled with you.

Mr. Beddow: I know you have, Your Honor, but I wanted to call Your Honor's attention to that point.

The Court: All right. Let's go ahead.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Mr. Wagner, do you know whether there was any solicitation in Alabama by this committee to finance the placing of this ad?

Mr. Embry: We object to a transaction between others. Res Inter Alios Acta—

The Court: Yes. How would The Times be responsible for what they did? I believe the objection is good. Let me give you an exception.

[fol. 393] By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Does this document, Defendants' Exhibit No. 3, indicate who paid for this ad?

A. It indicates that this is an order from the Union Advertising Agency at 302 Fifth Avenue in New York City, New York and it has as the advertiser the National Committee to Defend Martin Luther King.

Q. Well, is that the answer to the question, that the committee paid for the ad?

A. The advertising agency is the one that would pay us for the ad and from whom they get their money is—

Q. You got it out of the advertising agency.

A. Yes. The Union Advertising—

Q. They paid you.

A. Yes, sir.

Q. Did you run it at the usual fifteen per cent discount?

A. Yes, sir. They are a recognized agency.

Q. All right, sir. That's all.

Mr. Embry: No further questions.

Roger J. Waters, having been duly sworn, was called as a witness for the Defendant and testified as follows:

Direct examination.

By Mr. T. Eric Embry:

Q. Your name is Roger Waters?

A. Roger J. Waters.

Q. Are you a resident of New York?

A. Yes, sir.

Q. New York City or New York State, and if so, where do you reside?

A. Mt. Vernon, New York, Westchester County.

Q. Are you the National Circulation Manager of The New York Times?

A. Yes, sir.

[fol. 394] Q. The New York Times Company, the defendant in this case?

A. Yes, sir.

Q. One of the defendants?

A. Yes, sir.

Q. Mr. Waters, as such is it your business to distribute The New York Times newspaper for whatever distribution is made of that newspaper in the sense of getting that newspaper to whomever would wish to have it in the State of Alabama?

A. Yes, sir.

Q. Now, by what means is that newspaper sent from New York to anyone who might wish to have that newspaper in Alabama?

A. We would receive an order from either a dealer, a subscriber or a wholesaler, direct from them by mail.

Q. Well, what is an order? You said you would receive an order—

A. They would request us to send them so many copies of each issue and we would fulfill that order.

Q. Now, during the year 1960 thus far and during the year 1959, were there any such orders placed with you or sent to you in New York from any of those kind of individuals or concerns that you have just described, dealers or subscribers by mail?

A. Yes, sir.

Q. Now, as I understand it, you have testified that you make shipments from New York City to wholesalers and retailers and by mail to subscribers.

A. Correct, sir.

Q. In each of those instances is the shipment made as a result of the order during the two years I mentioned—

as the result of an order sent to you in New York by those people?

A. Yes, sir.

Q. Now, in the case of the retail and wholesale dealers, when an order is sent to you such as was sent to you during the year 1959 and thus far into 1960, how are you paid? How is The New York Times Company paid for any such paper as are shipped to wholesale or retail dealers in the State of Alabama?

[fol. 395] A. The retailer or the wholesaler including the subscriber pays The New York Times direct in New York City.

Q. Is that payment received by you in response to a bill rendered to them by you for the number of papers that they have purchased from you by order placed with you in New York?

A. Yes, sir.

Q. Is there any difference in the manner in which those individuals who receive the paper by mail, the United States mail, which you have described as subscribers? Is there any difference in the method of payment by these people?

A. Naturally, if they take an order—if they request a subscription for three months, six months or one year, they pay in advance for their subscription.

Q. Is that handled in the same fashion as normally are magazines and other periodicals?

A. Yes, sir.

Q. Are orders placed with you and you are paid in advance and you send it as long as the money holds out. Is that correct?

A. That's correct. They carry an expiration date.

Q. Was that true in 1959 and 1960 in Alabama?

A. Yes, sir.

Q. That was true for whatever subscribers you had in Alabama?

A. Yes, sir.

Q. Now, during the year 1960—first of all, let me show you a memorandum. Is that yellow piece of paper in your handwriting?

A. Yes, sir.

Mr. Nachman: I don't know whether we will object to this or not, Your Honor. It is a little difficult to tell just what it is and where it came from.

The Court: Well, the handwriting seems to be very legible. What does it purport to be, Mr. Embry?

Mr. Embry: It purports to be a memorandum of his own, Your Honor, compiling the figures with respect to the circulation of the paper in Alabama for the period of time I have asked him about.

[fol. 396] The Court: He made the memorandum himself?

Mr. Embry: Yes, sir.

The Court: I will let it in and give you an exception.

Mr. Nachman: Well, I didn't know whether I was going to object to it or not. Could we find out when and where he made this memorandum and from what records he extracted it from?

The Witness: I extracted these from my own records.

Mr. Nachman: Where did you do it?

The Witness: In New York City.

Mr. Nachman: From the records there. In other words, you made this memorandum in New York City. Is that correct?

The Witness: That's correct, sir.

Mr. Embry: We offer it, Your Honor.

(Yellow sheet of paper dated 1960 containing handwriting and figures offered and received in evidence and identified as Defendants' Exhibit No. 4.)

Direct examination. (Continued)

By Mr. T. Eric Embry:

Q. Now, Mr. Waters, I show you Defendants' Exhibit No. 4 which we have offered and which His Honor has admitted into evidence which is your memorandum containing your figures. In order to ask you a question and whether you need to refer to this or not, I don't know, but if you do you may do so. During 1960 what was the daily circulation by all means, that is to say, by sales of The New York Times Company newspapers to retail dealers,

shipped from New York as you have described and paid for as you have described, to retail dealers done in the same fashion as you have described and by mail subscription. What was the average daily circulation of The New York Times newspaper in 1960?

A. About three hundred ninety daily copies.

[fol. 397] Q. What was the average during 1960 and assume the same facts for which I laid a predicate in my prior question, that is, sales by all methods and means of the Sunday New York Times newspaper in 1960 in Alabama?

A. About twenty-four to twenty-five hundred.

Q. During this same period of time, what was the—

Mr. Nachman: Just a minute. Aren't the records of The New York Times more specific than that? About twenty-four or twenty-five hundred?

Mr. Embry: Well, I asked him for an average.

The Court: Go ahead.

By Mr. T. Eric Embry: (Continuing)

Q. On Sunday—is it different each Sunday? I have asked you for your best average.

A. It differs from day to day.

Q. Is that figure which you have given us in response to that question the best average that you are able to compute with respect to that daily fluctuation?

A. Yes, sir.

Q. I mean, Sunday fluctuation.

A. Sunday fluctuation. Yes, sir.

Q. Now, what was your average daily circulation of The New York Times newspaper in 1960?

A. Do you mean national?

Q. Yes, sir.

A. Over six hundred fifty thousand daily.

Q. What is your average Sunday circulation of The New York Times newspaper nationally during 1960?

A. Over one million three hundred thousand.

Q. Now, Mr. Waters, with respect to the year 1959 I will ask you to tell His Honor whether there is any substantial difference in number in the circulation of the news-

paper in Alabama than that which you have testified to about in 1960?

[fol. 398] A. Very little.

Q. Now, is that true also with respect to the national circulation in 1959? Is there any substantial difference in those figures than that of 1960 in the national figure?

A. The 1960 figures have gone up.

Q. Nationally?

A. Nationally. Yes, sir.

Q. By that may I deduce from what you are saying that the Alabama circulation stayed about the same but the national figures have risen?

A. That is correct, sir.

Q. What change has there been in the national circulation daily of approximately six hundred fifty thousand and the Sunday circulation of one million three hundred thousand in 1960 over what it was in 1959?

A. An increase of about thirty-five thousand Sunday.

Q. Has there been any substantial change in the daily since 1959?

A. That has increased also.

Q. To what extent? Tell us what extent if you know and if you can approximate it in 1959 and '60—

A. About twenty thousand daily.

Q. About twenty daily and about thirty-five Sunday?

A. That's right, sir.

Q. Does the circulation department of The New York Times Company that is under your control and management at the present time own any property, real estate, chattels, personal property of any kind in the State of Alabama or has it during 1959 or 1960?

A. No, sir.

Q. Does the Circulation Department of your newspaper, The New York Times Company, maintain an office in the State of Alabama at the present time or has it at any time from the present date during the year 1960 back through 1959?

A. No, sir.

Q. Are there any residents of the State of Alabama who are employed by the Circulation Department of The New York Times Company?

A. No, sir.

[fol. 399] Q. Has there been at any time from the present date back through the year 1959?

A. No, sir.

Q. Do you have any listings of the circulation department in any directories or telephones or any other mediums such as that in the State of Alabama listing your office in the Circulation Department?

A. No, sir.

Q. Have you had from any time to the present date back through the year 1959?

A. No, sir.

Q. Now, undoubtedly you will be asked questions with reference to this on Cross Examination and so I would like to ask you now do you have and have you compiled for our information—have you compiled for our information the names of those dealers, retail and wholesale dealers, to whom you have sold your products on orders from them sent to your office in New York City as you have testified?

A. Yes, sir.

Q. And to whom you testified you have shipped these papers from New York City?

A. Yes, sir.

Mr. Nachman: We have no objections.

By Mr. T. Eric Embry: (Continuing)

Q. How do you get these papers to the wholesale and retail dealers at the time you testified you shipped them? By what means of transportation is the paper gotten to these people?

A. The paper is dispatched from our New York office to the various terminals and we take advantage of the best transportation facilities available and to get papers down into Alabama we use the regular postal mail service and we also take advantage of rail service in baggage cars and also we ship papers into Alabama from New York by airplane or they transfer in Washington from the earliest possible train out of Washington.

Q. Now, at the time you make use of these means of [fol. 400] transportation, do you ship those newspapers to whomever they are shipped and I will get into that procedure later—do you ship those to them prepaid and do you part with those papers when you place them on the means of transportation employed?

A. We pay for all the transportation. We pay for every bit of it.

Q. Those papers that you ship by the means and methods that you have described are sent to those wholesale dealers or retail dealers whichever the case may be and I will ask you is that what they are charged for? Are they charged for what you ship to them?

A. Yes, sir.

Q. Is it that which you are paid for?

A. Yes, sir.

Q. Do you receive payment for that in New York City at the home office of the newspaper?

A. At the home office of The New York Times.

Mr. Embry: Now, we had an exhibit prepared and identified as Defendants' Exhibit No. 5—

Mr. Nachman: Excuse me. There is one question that I want to ask about that exhibit. I don't think I am going to object to it, on the lower portion of it where you show "Direct Accounts" and where you list cities, is it sometimes correct that there is more than one direct account in that city?

The Witness: Not as a rule.

Mr. Nachman: But in some instances there may be. Is that what you mean by saying, not as a rule?

The Witness: In some instances there could be.

Mr. Embry: We offer Defendants' Exhibit No. 5 into evidence as there is no objection to it.

(One yellow sheet of paper listing wholesalers and "Direct Accounts" in handwriting, offered and received in evidence and identified as Defendants' Exhibit No. 5.)

[fol. 401] By Mr. T. Eric Embry: (Continuing)

Q. Is that a memorandum of yours, Mr. Waters, listing the wholesale dealers to whom you ship The New York

Times newspaper in Alabama and the retailers or the persons whom you described as Direct Accounts?

A. Yes, sir.

Mr. Embry: May I just read it, Your Honor? It is very short.

The Court: Yes. Go ahead.

Mr. Embry: These are the wholesale dealers to whom you ship the newspaper. "Luni News Agency, Dothan, Alabama. Carter's News Agency, Mobile, Alabama, Montgomery News Company, Montgomery, Alabama. Anderson News Company, Florence, Alabama. Gadsden News Company, Gadsden, Alabama. Jefferson News Company, Birmingham, Alabama." Is that correct, Mr. Waters?

The Witness: Yes, sir. That's correct.

By Mr. T. Eric Embry: (Continuing)

Q. Now, the direct accounts are the retail dealers you have shown there—in that instance you have shown the names of the towns only. I will read them to you. '"Alexander City, Alabama. Bessemer, Alabama. Greenville, Alabama. Ozark, Alabama. Selma, Alabama. Talladega, Alabama. Tuscaloosa, Alabama. Tuskeegee, Alabama." You have also listed Tuskeegee Institute. What does that mean?

A. It means that there is a dealer in Tuskeegee who gets newspapers also.

Q. Now, are any of these dealers that you ship to direct that you call retail dealers or direct accounts—I notice you don't list them by names in those cities. Do you know the names of those people? I didn't ask you to get the names but do you recall them? They may be interested in knowing who they are if you know.

Mr. Nachman: We have got the records here.

By Mr. T. Eric Embry: (Continuing)

Q. Now, was that to whom you shipped in 1960 the New [fol. 402] York Times newspaper by the methods which you have described in your previous testimony?

A. Yes, sir.

Q. Did you ship in 1959 to those same people?

A. Approximately those same people.

Q. To your knowledge, did any of those people that you have just testified about in the accounts you have mentioned in your memorandum, Defendants' Exhibit No. 5—are any of those during 1960 or 1959 handling The New York Times newspaper exclusively to the exclusion of other newspapers and periodicals?

A. No, sir.

Q. Are they just regular news dealers?

A. They are just regular news dealers so far as we know. They write in for the paper and no doubt, the direct accounts handle magazines and probably local papers and everything else.

Q. What we all think of as news dealers.

A. News dealers, yes.

Q. Now, during 1960 and 1959 have you ever sent anyone from your office, an employee of The New York Times Company or anyone else, into the State of Alabama in connection with the circulation of the New York Times newspaper either to solicit circulation or to promote circulation or to supervise or to check on the method and efficiency of anyone to whom you sold the newspaper in Alabama with respect to the circulation thereof?

A. No, sir.

Q. Is there any employee in your department, The Circulation Department of The New York Times Newspaper, whose job or duty it is either requires or permits that person under your direction or anyone else's direction to enter the State of Alabama for any of the purposes that I outlined in my previous question with respect to the circulation of The New York Times newspaper?

A. No, sir.

Q. Do you have any employee during this period of time of 1960 or 1959 or have you had during that period of time, who has entered the State of Alabama and called upon any of these wholesale or retail or direct accounts dealers with [fol. 403] respect to the circulation or with respect to any other of the affairs of The New York Times newspaper?

A. No, sir.

Q. Does your department do anything within the State

of Alabama by any employee of The New York Times Company or has it done anything during 1960 or during 1959 to solicit subscriptions or circulation—subscriptions or circulation of The New York Times newspaper?

A. No, sir.

Q. Have you, at the present time, or anyone who is an employee of The New York Times Company in your department or during 1960 or 1959 ever attempted either in the State of Alabama or from without the State of Alabama to supervise or direct the activities of any person, firm or corporation or partnership or any kind of entity in Alabama with respect to the affairs of the circulation, the sale or the distribution of The New York Times newspaper in Alabama?

A. No, sir.

Q. All right. That's all.

Cross examination.

By Mr. Sam Rice Baker:

Q. Mr. Waters, what steps do you take to improve your circulation in Alabama?

A. None whatsoever.

Q. None whatsoever?

A. That's right.

Q. In shipping these newspapers, Mr. Waters, you say that they are all prepaid in New York.

A. We pay the entire charges whether air freight, postal rates or railroad rates.

Q. Are any papers shipped on consignment?

A. No, sir.

Q. Is any credit ever given for unsold papers?

A. Yes, sir.

[fol. 404] Q. How is that handled?

A. That's handled when the dealer or the wholesaler has what we call an irregularity in arrival. For instance, it could be twenty-four hours late. There may be something wrong in route from New York to the destination. They notify us of this irregularity and we send them a claim card and they send back to us the claim card.

Mr. Embry: What do you send them?

The Witness: A claim card. That's spelled c-l-a-i-m. Claim card.

By Mr. Sam Rice Baker: (Continuing)

Q. Go ahead.

A. And they return that to us with the amount of copies unsold for that day and credit is allowed.

Q. How do you determine whether an irregularity in delivery has occurred?

A. They take that to the baggage man.

Q. Who do you mean by they?

A. Whoever receives the papers whether it be the dealer or the wholesaler. He takes that to the destination point.

Q. That's the baggage man in Alabama, isn't it?

A. That's right.

Q. And you have prepaid the freight on those shipments.

A. Yes, sir.

Q. So that when those papers leave New York the carrier is your agent, isn't he?

Mr. Embry: We object to that, Your Honor. That's a question of law for the Court.

The Court: Yes. Go ahead.

Mr. Baker: Who has the risk of loss on those papers during transit?

Mr. Embry: We object to that, if the Court please. It is a question of law and invades the province of the Court.

The Court: Well, if there is any agreement between them—of course, I don't know.

[fol. 405] Mr. Embry: He didn't ask him whether there was any agreement in respect to—

Mr. Baker: Does your contract for sale—does your contract of sale call for The New York Times to bear the risk of loss of those papers during transit?

Mr. Embry: We object to that, if the Court please. There is no evidence of any contract sale, Your Honor.

The Court: I will let it in and give you an exception.

Mr. Embry: We except.

The Witness: We have no contract.

By Mr. Sam Rice Baker: (Continuing)

Q. Have any papers ever been lost during transit between The New York Times and Alabama?

A. Yes, sir.

Q. Who bore the risk of loss?

A. The New York Times in New York.

Q. The New York Times bore the risk of loss and the baggage man handles claims for delayed papers in the State of Alabama for papers that don't get there on time, doesn't he?

Mr. Embry: We object to that, if the Court please. Don't answer that. What baggage man? When and where? What kind of claim? He doesn't define any area of any kind. The witness would have to interpret the question in order to answer it.

The Court: What is your theory on that, Mr. Baker?

Mr. Baker: My theory is, Your Honor, that he just testified that he gave credit for papers that were delayed in transit and I asked him whether or not he investigated how they were delayed. He testified that he had the local dealer take it to the local baggage man.

The Court: I think it would be admissible. Let me give you an exception to each question along that line.

Mr. Embry: We except, Your Honor. He said he furnished claim cards and they allowed it when they sent it in—

[fol. 406] The Court: Well, we will get the general background of it—

Mr. Embry: We except.

The Witness: What is the question, sir?

Mr. Baker: Mr. Reporter, read the question, please.

The Reporter: Question: "The New York Times bore the risk of loss and the baggage man handles claims for delayed papers in the State of Alabama for papers that don't get there on time, doesn't he?"

The Witness: That is correct, sir.

By Mr. Sam Rice Baker: (Continuing)

Q. What does the local baggage master have to do, that is, what forms does he fill out, what certification does he make in order for The New York Times to pay a refund on delayed papers?

Mr. Embry: We object to that, if the Court please. It calls for matters between other parties, Res Inter Alios Acta—

The Court: I will let it in.

Mr. Embry: We except.

The Court: Let me ask this question. When you have these transactions with the baggage man and the dealer goes down there to see about the train being late and to file some kind of a claim, is the baggage man paid anything by The New York Times?

The Witness: No, sir. We furnish the cards.

By Mr. Sam Rice Baker: (Continuing)

Q. You furnish what?

A. We furnish the postal card or claim card.

Q. What is on that claim card? Do you have one with you?

A. No, sir. I do not. That's just a form of an irregularity notice, incompletes, late arrivals and things like that.

Q. Is it a printed form?

A. A printed card, yes, sir.

Q. It is a printed card furnished by The New York Times.

[fol. 407] A. Yes, sir. A postal card.

Q. How does the baggage man get that card?

A. The dealer brings it over to him.

Q. The dealer brings it to him and he fills it out—

A. That substantiates his claim.

Q. And the baggage man fills it out and signs it.

A. Just signs the card.

Q. Who fills it out?

A. The dealer fills it out. He has to put the date of the irregularity on it.

Q. You require the baggage man to sign that.

Mr. Embry: We object to what he requires. There is no evidence that—

The Court: Well, you can ask what the custom is perhaps.

By Mr. Sam Rice Baker: (Continuing)

Q. Well, do you pay the claim without the signature of the local baggage man?

A. The claims are so nil that we recognize them in New York. There is no way for the Pennsylvania Railroad or any railroad to check on irregularities in newspapers.

Q. My question was, do you pay them without the signature of the local baggage man on your claim form?

A. We do.

Q. But it is customary to require—

A. It is customary for the party to bring it over to the baggage man and have him sign it.

Q. Now, Mr. Waters, I show you a group of exhibits numbered from 276 to 309. I have got them arranged by years and I will first show you a 1960 bill and I will ask you to identify them and state exactly what they are. They are part of the original records of The New York Times, aren't they?

A. That's correct. Must I refer to each one of these?

Q. No. You may just identify the whole group if you will.

[fol. 408] A. The first one I have here is Exhibit No. 277. This is a record of our billing showing the amount of copies drawn for the month, Sundays, cash payments and also credits allowed. The second sheet is a credit return voucher which indicates that this wholesaler returned forty-one daily copies.

The Court: What do the letters "L. E." mean? Does that mean Late Edition?

The Witness: Daily copies. We refer to the daily issue and the Sunday issue. It shows credit allowed and also shows returns under Sunday which also has been allowed for the full amount.

By Mr. Sam Rice Baker: (Continuing)

Q. How many dailys and how many Sundays did he return in that credit memorandum?

A. He returned forty-one dailys and thirty-one Sundays.

Mr. Embry: For what period of time? Is that indicated there?

By Mr. Sam Rice Baker: (Continuing)

Q. Can you state what issue it was that was returned?

A. This would be for the month of November, 1959. It would be from November 1st up through November 30th.

Q. How many did he return during that time?

A. Forty-one daily papers and thirty-one Sundays.

Q. Does it show what issue?

A. It shows the issues right out here on the left hand column. No. 1 indicates the 1st of the Month, No. 2 indicates the 2nd of the month and so forth.

Q. Does it show how many he returned of each issue?

A. Yes, sir.

Q. Are those the late shipments that you testified about?

A. I presume so.

Q. Well, I notice—

A. Yes, I'm sorry. It is late. It indicates Sundays late and incomplete.

[fol. 409] Q. What does incomplete indicate?

A. That indicates that a part of the Sunday paper is missing. It could not be sold and probably got lost in route.

Q. Those figures do not indicate that he returned the entire late issue, do they?

A. Looking at this, I would think he has done so due to the fact that there are some days in there that he does not show any return.

Q. Don't those figures indicate that he returned a different amount of papers on different days?

A. That's right, sir.

Q. Then, he evidently sold some and returned some, didn't he?

A. That's right.

Q. So, you do give credit for unsold merchandise, do you not?

Mr. MacCloud: Your Honor, we object to that. That's an argumentative type question.

The Court: I believe that would be a shorthand rendention of collective fact—I will give you an exception.

Mr. MacCloud: Your Honor, he hasn't stated in his question under what circumstances they would give credit for the merchandise—

The Court: You may bring that out on Re-Direct Examination. I think it is permissible. I will give you an exception.

Mr. MacCloud: We except.

By Mr. Sam Rice Baker: (Continuing)

Q. You do give credit for unsold newspapers, do you not?

A. That's right.

Q. Now, that's just one credit memorandum to this account. Let's turn over and take up the next credit memorandum. What is the date of that credit memorandum?

Mr. Embry: Your Honor, he is being examined about these papers as exhibits and they haven't been formally introduced into evidence. He is treating them as though they were in evidence and therefore I want to at this time make our objection—

[fol. 410] Mr. Baker: Well, we will offer them in evidence now.

Mr. Embry: All right. Let me make my objection then. I don't know what the numbers of these exhibits are consecutively—

The Court: I believe it is 276 to 309.

Mr. Embry: Then, to these exhibits 276 to 309, Your Honor, we object and as grounds for our objection we say that they are incompetent, irrelevant and immaterial evidence and that insofar as any of these exhibits purport to cover the matters contained in those exhibits for any period of time otherwise than during the month of April, 1960 that they are immaterial, irrelevant and incompetent evidence for the reason that they are too remote in point of time in respect to the time about which they purported service of process was obtained upon this defendant on April 21st and April 26, 1960. They wouldn't shed any light on the issue before the Court in respect to the doing of business or not by this defendant during the pertinent period of time about which the Court is inquiring on the Motion to Quash. It is not calculated to prove or disprove any of the grounds of defendants' motion to quash in this case and again, with respect to the period of time involved

any of those—otherwise than those exhibits relating to the period of time of April, 1960 are too remote in that regard. The matters sought to be shown by the offer of the exhibits and each of them separately and severally doesn't have any evidentiary value with respect to the activities of this defendant in the State of Alabama during the period of time which is pertinent to the inquiry before the Court in respect to doing business by this defendant in the State of Alabama at or near the time of the attempted service of process in April of 1960. The exhibits separately and severally fail to shed any light on the issue of whether this cause of action accrued from or arose from the doing of any business, the performance of any work or service by this defendant in the State of Alabama at or near the time of the attempted service of process upon it as set forth in the affidavit Mr. Nachman attached to the Complaint or as an incident of any of that work, service or the doing of business or the performance of work or service by this defendant in the State of Alabama at a pertinent time subject to the inquiry [fol. 411] before the Court on the issue of whether it was doing so as is alleged in the affidavit attached to the Complaint. We would like, if it is agreeable with opposing counsel, to have the same type agreement we had with respect to these other documents without the necessity of having to interrupt him when he refers to any one of them and let the record show that it is stipulated that the objection and all grounds thereto would be assigned to each reference to the document and to each document and to each of the numbered exhibits as they are referred to and throughout the examination of the witness about them without the necessity of restating it and with the privilege on our part to add any more specific grounds if that is occasioned by the nature of the question asked of the witness and with the stipulation that if the occasion demands it to permit the Court Reporter to actually and physically to imprint in the transcript, if there is a transcript, those particular objections to the particular documents in question. Is that agreeable, Mr. Baker?

Mr. Baker: Yes, sir.

Mr. Embry: Your Honor, Mr. Loeb called my attention to one other ground of objection which I overlooked and

which I would like to add to the others. That is, that each of the documents without exception of the numbered exhibits, 276 through 309, as offered in evidence shows on the face of the document shows that the entry of the material, and according to the testimony of Mr. Waters, the entry of the information on the document was made in New York and the payment received in New York, the credit given if the occasion arose for the giving of credit, and that was given in New York and the records themselves are kept and maintained in New York and they therefore do not reflect any activity in Alabama on the part of this defendant.

The Court: I will let them in and give you an exception to the Court's ruling.

Mr. Embry: We except, if the Court please.

[fol. 412]

NEW YORK TIMES COMPANY ASSIGNMENT OF ADDITIONAL GROUNDS OF OBJECTIONS

Mr. Embry: Under the stipulation and agreements had throughout the hearing on the Motion to Quash in the L. B. Sullivan case wherein it was agreed that counsel for The New York Times Company could assign any additional grounds of objections to questions propounded to the various witnesses and to the introduction of documentary evidence that they saw fit to do, such stipulation being for the purpose of saving the Court's time on the original hearing, the defendant, The New York Times Company, wishes to and does assign the following additional grounds of objection. To each objection made originally to questions propounded to the witnesses and the introduction of documentary evidence, that the questions called for a mental operation of the witness and not facts and that the questions called for an answer which does not tend to prove or disprove whether Don McKee and John Chadwick were agents of The New York Times Company so that purported service upon McKee would constitute valid service upon this defendant. It does not tend to prove whether or not The Times did business in Alabama or whether the cause of action attempted to be stated in the complainant's cause accrued

from or was incident to the doing of business or performance of work or service in Alabama by The New York Times Company or its agents, servants or employees and that these same grounds of objection apply to the introduction of the various exhibits offered by the Plaintiff. Further grounds of objection to questions propounded to the various witnesses as well as to the introduction of documentary evidence are that the question and the evidence sought to be adduced by an answer thereto and the documents would not be material or legal evidence such as would authorize a construction by the Court of Section 199 (1) of Title 7, Code of Alabama, 1940, that would permit the Court to assert jurisdiction over the person of The New York Times Company, a corporation, and to admit such evidence for such purpose would be such a misapplication of the law as would deprive this defendant of its property without due process of law in contravention or violation of the Fourteenth Amendment of the Constitution of the United States and in contravention or violation of Article 1, Section 6 of [fol. 418] the Constitution of Alabama, 1901, and would deny to this defendant equal protection of the law in contravention or violation of the Fourteenth Amendment of the Constitution of the United States and would constitute an abridgement of freedom of the press in contravention or violation of the First Amendment to the Constitution of the United States, taken together with the Fourteenth Amendment of the Constitution of the United States and would impose an unreasonable burden upon Inter-State Commerce in contravention or violation of Article I, Section 8, of the Constitution of the United States and such questions and the evidence sought to be adduced therefrom and such documents would be illegal and immaterial as a basis for the Court construing or holding that Don McKee was an agent of this defendant upon whom service of process might be had so as to support a holding by the Court that any purported service upon him would subject this defendant to the jurisdiction of this Court and the admission of such evidence and the holding on the basis of such evidence that he was an agent so as to subject this defendant to the jurisdiction of this Court, would deprive this defendant of

its property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States and in violation of Article 1, Section 6 of the Constitution of Alabama, 1901, and would deny to this defendant equal protection of the law in violation of the Fourteenth Amendment of the Constitution of the United States and would abridge freedom of the press in violation of the First Amendment to the Constitution of the United States, taken together with the Fourteenth Amendment of the Constitution of the United States and would impose an unreasonable burden upon Inter-State commerce in violation of Article I, Section 8 of the Constitution of the United States.

[fol. 414] (The New York Times Company credit memorandum for the years 1959 and 1960 and various papers attached thereto, offered and received in evidence and identified as Plaintiff's Exhibits 276 through 309.)

By Mr. Sam Rice Baker: (Continuing)

Q. Aren't those records, Exhibits 276 through 309, the records that you prepared this memorandum marked Defendants' No. 4 from?

A. No, sir.

Q. Are they a part of the regular records of The New York Times Company?

A. These are part of the original records of The New York Times Company.

Q. And they were furnished to the Plaintiff pursuant to a Court Order to Produce, were they not?

Mr. Loeb: That is already in. He already testified to that.

The Witness: Yes, sir.

By Mr. Sam Rice Baker: (Continuing)

Q. What records were the figures in Defendants' Exhibit No. 4 compiled from?

A. Well, this here is from memory. We have already gone over the figures and this is our estimated figure of the national circulation—the figures on Alabama were taken off the records.

Q. In other words, Defendants' Exhibit No. 4 was not prepared from any records whatsoever but was prepared from your own recollection. Is that correct, sir?

Mr. MacLeod: Your Honor, we object to that. That is an argumentative type question on the part of Mr. Baker [fol. 415] and mis-stated what the record just said and we would like to ask the Court to instruct Mr. Baker not to attempt to abuse our witness when he is on the witness stand—

The Court: I don't think Mr. Baker would abuse a witness. Let me give you an exception. I think he may ask that question to find out how the memorandum was prepared.

Mr. MacLeod: We except.

Mr. Loeb: Your Honor, Mr. Waters didn't say that all of that memorandum was prepared from memory. He said that the national figures were from his recollection but that the Alabama figures were prepared from the records.

The Court: Well, won't the Record show that?

Mr. Loeb: But not the question that followed it, Your Honor. The question that followed it made the assumption that—made the assumption which Mr. Waters did not say—he didn't say that it all came from his memory—

Mr. Baker: My first question was, if the Court please, state what records Defendants' Exhibit No. 4 was prepared from and I repeated it. State what records Defendants' Exhibit No. 4 was prepared from.

The Witness: The records right here in my hand.

By Mr. Sam Rice Baker: (Continuing)

Q. What records are they?

A. These are records which I submitted which you have copies of.

Q. Are they part of the original and permanent records of The New York Times?

A. Yes, sir.

Mr. Baker: We don't have any copies of these, Your Honor.

Mr. Embry: You are welcome to those if you want them.

Mr. Baker: That's not the point, Mr. Embry. They were not produced in response to the Court Order.

Mr. MacLeod: Which item are you talking about?

[fol. 416] Mr. Nachman: Your Honor, we assumed that the records that were introduced were the circulation records for 1959 and 1960 which the Order called for.

Mr. Embry: Your Honor, there is a great deal of excitement going on here because a mathematical calculation has been made from all this volume of evidence which was a calculation of the total sum of some figures and that's what this is.

The Court: Go ahead.

By Mr. Sam Rice Baker: (Continuing)

Q. All right. Now, let's go back to Exhibit No. 277 and turn to the second credit memorandum. We have covered the first one. What does that memorandum show in the way of credit for returned newspapers?

A. It shows that he returned fifty-five dailies and received credit and shows that he returned ninety-eight Sundays—one hundred eight Sundays and received credit for ninety-eight. That's right. He returned one hundred eight Sundays and received credit for ninety-eight.

Q. What is the total amount of credit given on that credit memorandum?

Mr. Embry: Your Honor, we object to that. The credit memo speaks for itself.

The Court: Well, I can read it but let him show—let him state what it shows there. What does it say?

The Witness: It shows $24.65, Your Honor.

The Court: What is the retail price of the Sunday edition just for the information of the Court? Is it about 25¢ or what?

Mr. Loeb: Your Honor, this wouldn't reflect the retail price. This would reflect only the wholesale price.

By Mr. Sam Rice Baker: (Continuing)

Q. What period of time does this memorandum cover?

A. October, 1959.

Q. Once again, I will ask you if it doesn't show a return of papers in odd lots and odd numbers?

[fol. 417] A. Yes, sir.

Q. So that the dealer did not return all of any late issue.

Mr. Embry: We object to that question, Your Honor. It assumes that a return was made because it was late rather than being returned because it was an incomplete issue or because of some other irregularity that was testified about.

The Court: I will let it in and give you an exception.

Mr. Embry: We except.

Mr. Baker: That's correct, isn't it?

Mr. Embry: What is your ruling, Your Honor?

The Court: I will let it in and give you an exception.

Mr. Embry: I thought that was Your Honor's ruling but I wanted to be sure. We except.

The Witness: He didn't return all of the unsold papers?

By Mr. Sam Rice Baker: (Continuing)

Q. All the papers delivered that arrived late.

A. I would take it that he has.

Q. Well, now, don't those figures vary?

A. Yes, sir.

Q. Don't they indicate again that he sold some papers and returned some papers?

A. Yes, sir.

Q. All right, sir. What is your next credit memorandum? All of these are for the Carter News Agency in Mobile on Exhibit No. 277. What is the total amount allowed for returns on that credit memorandum?

A. That shows fifty-six daily and one hundred four Sundays.

Q. How much in dollars?

A. It shows $26.00.

Q. Again I ask you doesn't it show the return of papers in odd lots and odd amounts?

Mr. Embry: We object to that, if the Court please. There is no definition as to what is meant by odd lots and odd amounts. It is an indefinite quantity.

[fol. 418] The Court: Well, I think the Court has an

understanding to what is meant by odd lots and odd amounts. I will give you an exception.

Mr. Embry: We except.

The Court: You may ask him what an odd lot was, if you wish.

The Witness: It does show a different figure for each day.

By Mr. Sam Rice Baker: (Continuing)

Q. Again, doesn't it show that some papers were sold and some were returned?

A. That's right.

Q. What period of time does that credit memorandum cover?

A. December, 1959.

Q. Still on Exhibit No. 277, what is the next credit memorandum shown thereon?

Mr. Embry: Your Honor, we are going to interrupt if we may and I object on the basis of the obvious and patent ground that these exhibits speak for themselves and a reading of them is uncalled for by the witness and I might state to Your Honor that if we are going to read each of these exhibits I feel that we might be here throughout the month of August—

Mr. Baker: Well, it won't take any longer than Mr. Embry's objections and that's for sure.

The Court: Well, go ahead.

Mr. Embry: We except.

By Mr. Sam Rice Baker: (Continuing)

Q. What does the next sheet show with reference to the return of merchandise?

A. It shows forty-five daily and seventy Sundays.

Q. How much in dollars?

A. It shows $17.98.

[fol. 419] Q. Once again I will ask you if the returns are not in odd lots and odd amounts?

A. Yes, sir.

Q. Again, does not that credit memorandum indicate that some papers were sold and some were returned?

A. I wouldn't say so. It is possible a full order was returned in some cases on these memoranda.

Q. Does this column show the number of papers that were returned?

A. Yes, sir.

Q. What do these figures there indicate? Is that the month?

A. Over there on the left is the month. That's the printed figure.

Q. The printed figures are the months?

A. Yes, sir.

Q. In other words, only one paper was returned?

A. One paper was returned on January 4th and one paper was returned on January 5th and so forth.

Q. Well, then, certainly the full lot was not returned.

Mr. Embry: We object to that, Your Honor. That's argument.

The Court: Yes, I think that would be argumentative.

By Mr. Sam Rice Baker: (Continuing)

Q. Turning now to the next credit memorandum, what period does that cover?

Mr. Embry: Are you still on Exhibit No. 277?

Mr. Baker: That's right.

The Witness: That covers March, 1960.

By Mr. Sam Rice Baker: (Continuing)

Q. What does that show in the form of returns?

A. The same as the others.

Q. Well, how many papers and how many dollars?

A. Oh, I'm sorry. It shows twenty-nine daily copies, sixteen Sunday copies and a total of $5.33.

[fol. 420] Q. And that shows the same as the others in reference to odd numbers and odd lots, does it not?

A. That is correct, sir.

Q. And again it indicates that some papers were sold and some were returned, does it not?

A. Yes, sir.

Q. Does the same apply to credit memorandum No. 437 which is for the month of May, 1960? Is that correct?

A. I don't see any 437. I see a 5—438.

Q. Well, 438 I meant to say. You may identify it properly.

A. It shows twenty-four daily copies, sixteen Sunday copies and the amount of money allowed as $5.00.

Q. And it shows the same in reference to odd lots and odd amounts.

A. Correct.

Q. And it shows the same as to some newspapers being sold and some returned.

A. Correct.

Q. I will ask you if the same applies to No. 6-320? I am still referring to Exhibit 277.

A. This is a return for the month of April, 1960 and it shows that thirty-three were returned daily and credit allowed and forty Sundays and credit allowed.

Q. What is the total allowance?

A. The total allowance shows as $10.75.

Q. Does the same apply to that credit voucher?

A. Credit voucher 6-1733 indicates returns taken for the month of May, 1960 and it shows that thirty dailies were returned and sixty-four Sundays and credit allowed for the full amount of $15.71.

Q. And again it shows odd lots and odd amounts.

A. Yes.

Q. And shows that some papers were returned.

A. Yes, sir.

Q. Now, I will ask you to examine Plaintiff's Exhibit No. 279 which is the Jefferson News Company of Birmingham, [fol. 421] Alabama, and I will ask you to examine the credit memorandum attached to that exhibit and I will ask you if it doesn't show the same handling and the same course of dealing that you testified about in reference to Plaintiff's Exhibit No. 277?

A. That is correct, sir.

Q. Referring to the account, can you state from that account the total amount of these credit memoranda and the allowances for returned newspapers? I am referring to Exhibit No. 279 now.

Mr. Embry: For what period of time?

Mr. Baker: For the period covered by this statement for the year 1960.

The Witness: Credit has been allowed.

By Mr. Sam Rice Baker: (Continuing)

Q. I say, can you state the total amount of credit allowed? Is it broken down that way?

A. No, sir. It is not broken down that way.

Q. I will ask you if the credit allowances shown on this statement marked Exhibit No. 279 are not substantial?

Mr. Embry: We object to that, if the Court please. What is substantial to Mr. Baker may not be substantial to Mr. Waters or may not be substantial to The New York Times or to Your Honor—

The Court: Can you clarify it, Mr. Baker?

By Mr. Sam Rice Baker: (Continuing)

Q. Well, read into the Record then the various credit allowances shown by Exhibit No. 279.

Mr. Embry: We object to that because the Exhibit is in evidence and it speaks for itself and it is time consuming—

The Court: I don't think it necessary to read all that into the Record. It is already in evidence.

Mr. Baker: Well, he testified on Direct Examination that it was minimal, Your Honor—

Mr. Embry: He didn't testify to any such thing—

[fol. 422] The Court: Minimum?

Mr. Baker: Minimal.

Mr. Embry: Your Honor, there is no testimony—as I recall his testimony about anything being minimal. He compared figures on circulation. He did not testify about any money on Direct testimony—

The Court: Well, these papers have been introduced into evidence and I think they can speak for themselves.

Mr. Baker: Well, I was trying to save the Court the trouble of wading through all of them.

The Court: Go ahead.

By Mr. Sam Rice Baker: (Continuing)

Q. Well, Mr. Waters, I will take one more. I will take the one captioned Montgomery News Company of Montgomery and I will ask you to examine those credit memoranda and ask you the same questions I asked you with reference to Exhibits 277 and 279.

Mr. Loeb: What is the number of that exhibit?

The Witness: It is No. 280, sir.

Mr. Baker: Your answer, sir?

The Witness: Yes, sir.

Mr. Baker: Now, I believe you have identified all of these exhibits both for the years '59 and 1960 numbered from 276 to 309 as the original permanent records of The New York Times?

Mr. Loeb: We conceded that at the time you offered them into evidence.

The Witness: We did.

By Mr. Sam Rice Baker: (Continuing)

Q. Mr. Waters, did I understand your testimony to be that the Alabama daily circulation in 1960 was 390 newspapers a day?

A. That's correct, sir.

Q. And that the Sunday circulation was twenty-four to twenty-five hundred?

A. Yes, twenty-five hundred.

[fol. 423] Q. Mr. Waters, is there any department in The New York Times other than yours that has anything to do with the promotion of subscriptions?

A. The subscription department.

Q. Then, any efforts to increase the circulation would come from the subscription department and not your department, wouldn't it?

Mr. Embry: Don't answer that question. We object, if the Court please. It assumes that efforts were made and—

The Court: Lay a little more predicate on that. Do you know anything about the workings of the subscription department?

The Witness: Oh, yes, sir. As I stated earlier, these orders are filled by the subscriber who sends his money in advance and requests a subscription for a period of time.

By Mr. Sam Rice Baker: (Continuing)

Q. Is the subscription department under your jurisdiction and your division?

A. No, sir.

Q. Mr. Waters, generally, what are the duties and functions of the subscription department?

A. The duties and functions of the subscription department are to serve the public in the manner they wish a subscription entered for.

Q. Is it part of their function to promote the sale of subscriptions and the sale of newspapers?

Mr. Embry: We object to that, Your Honor. There is no predicate laid as to time and place and what in fact was done—

The Court: Well, I am assuming that all of these questions relate to the period of time we have under investigation.

Mr. Embry: Well, you would have to assume that, Your Honor—

Mr. Baker: In 1959 and in 1960.

Mr. Embry: It is not clear whether it relates to the State of Alabama—

The Court: Well, if he asks anything about New Jersey or Kamchatka, we will exclude it. You are asking about Alabama, as I understand it.

[fol. 424] Mr. Baker: I am asking about general functions now.

Mr. Embry: We object to it, Your Honor.

The Court: Well, you can be a little more specific, can't you?

By Mr. Sam Rice Baker: (Continuing)

Q. Do you have any particular knowledge of any activities of the subscription department in the State of Alabama?

A. No, sir.

Q. You don't know what they do in this State to promote subscriptions, if anything, do you?

Mr. Embry: We object to that, if the Court please.

The Court: I will let it in and give you an exception.

The Witness: Well, to my recollection, they don't do anything to promote subscriptions. The people come to us.

By Mr. Sam Rice Baker: (Continuing)

Q. Do they send any advertising matter through the mail in Alabama?

A. That would be hard to say.

Q. Mr. Waters, don't you know that either your department or the subscription department or some department of The New York Times sends circulars and literature into Alabama asking Alabama citizens to subscribe to The New York Times? Don't you know that?

Mr. Embry: We object, Your Honor, to anything sent by mail as not reflecting on activities within the State of Alabama and it is outside the scope of the definition of activity in a State by a corporation—a non-resident corporation—and can't shed any light on whether they are present here and maintain sufficient contacts which would subject to the jurisdiction of the Court—

Mr. Nachman: Your Honor, the United States Supreme Court twice within the past five or six years has decided that where a corporation's sole activity in contact with the State was through the mail that those corporations had sufficient contact within the State to subject them to the [fol. 425] jurisdiction of the Court. One is Traveler's Insurance Company case and the other is McGhee against the International Insurance Company and certainly we think it is relevant on the question of doing business whether or not they through the mails attempted to solicit Alabama subscribers to The New York Times. We certainly do not base our whole case on that but we think it is part of the evidence as to the manner in which they do business in this state.

Mr. Diana: Your Honor, may I make a statement?

The Court: Surely. Go ahead.

Mr. Diana: Your Honor, I have listened to many legal quotations by Mr. Nachman throughout this trial. On each occasion he mis-stated the holding of these cases and the import of these cases. Now, McGhee hasn't got a thing in the world to do with solicitation alone. He goes just far enough to create an impression as to what the law is. The McGhee case has to do with a contract which created a continuing obligation between the defendant corporation and the State which attempted to exercise jurisdiction over that corporation and we are not concerned with that here. So, I actually resent the half-stories about what these cases purport to hold.

Mr. Nachman: Your Honor, I—

Mr. Baker: I call on Mr. Diana to produce the cases.

The Court: You do what?

Mr. Baker: To produce his cases.

Mr. Diana: I will be very happy to produce the cases—

Mr. Baker: I don't like anybody to state that we mis-stated what—

The Court: Well, just sending a letter through the mail for an advertisement—I don't believe that's—

Mr. Baker: That's all there was in the Traveler's case—

The Court: Do you have that case?

Mr. Nachman: If Mr. Diana can show any other contact other than by mail contact, then I ask him to—

The Court: Well, let's get the cases—

Mr. Nachman: I ask him to produce now—

[fol. 426] The Court: Let's get the cases and that will save a lot of argument. We have a law library upstairs and anyone can get those cases.

Mr. Embry: Your Honor, may I make a suggestion?

The Court: Yes. Go ahead.

Mr. Embry: Perhaps I am acting in the capacity of referee but it would seem to me as a practical matter that if we pause now to make our legal arguments in this case we are going to cause a delay in the handling of the case in an expeditious manner.

Mr. Nachman: We happen to have the McGehee case right here, Your Honor.

The Court: Let me see it.

Mr. Embry: We will have to give you the other cases if you go into that one, Your Honor.

Mr. Nachman: This is the case that Mr. Diana said that I mis-stated.

The Court: Is this the McGehee case?

Mr. Nachman: Yes, sir.

The Court: Where is the part in here about mail? What head note is that?

Mr. Embry: Perhaps I can expedite matters by simply withdrawing my objection and letting him testify about it. I believe he was asking him about what they sent out to Alabama—

The Court: I don't see anything in here about using the mails—

Mr. Embry: I think there is a statute involved there too, Your Honor.

The Court: Well, Mr. Embry said he withdrew his objection, so let's go ahead now.

Mr. Nachman: Well, Your Honor, we do resent the fact that Mr. Diana said we mis-stated—

Mr. Loeb: Well, you let Mr. Diana go to the library to find the case when you had it here all the time.

[fol. 427] The Court: Well, if the objection is withdrawn why not go ahead—

Mr. Loeb: Well, you asked him to produce the case—

Mr. Nachman: Well, he left the room. I don't know why he left the room.

Mr. Embry: He left the room to get that case—

The Court: Well, he said he withdrew the objection. Let's go ahead now. Now, this will have to relate to the promotion of subscriptions here in Alabama.

Mr. Baker: That was my question, Your Honor.

The Court: Go ahead. He said he withdrew his objection.

The Witness: The only thing the subscription department sends out is a notification of expiration indicating when a subscription will terminate.

Mr. Embry: If the witness had told me this before we could have saved all of this but I didn't know that, Your Honor. I am sorry, Mr. Baker.

By Mr. Sam Rice Baker: (Continuing)

Q. And they don't send out any literature or advertising matter of any sort to the citizens of Alabama?

A. Not to my knowledge.

Q. Mr. Waters, is the sale of the microfilm edition of The New York Times in Alabama under your jurisdiction?

A. No, sir.

Q. You have nothing to do with that?

A. No, sir.

Q. You don't know whether it is sold in Alabama or how many are sold or anything about that?

A. No, sir.

Q. How about the sale of The New York Times Index?

A. The same applies to that as applies to the microfilm.

Q. Is there anyone here from the subscription department to testify concerning their activities in Alabama?

[fol. 428] Mr. Embry: We object to that question, Your Honor. It assumes that there are activities in Alabama.

The Court: I will let it in and give you an exception.

Mr. Embry: We except. He could testify about whether they do or not.

The Court: Well, if he knows, he can—

Mr. Embry: We except.

The Witness: They don't have.

By Mr. Sam Rice Baker: (Continuing)

Q. There is no one from the subscription department here.

A. That is correct, sir.

Q. I will ask you a question this way. If there were activities in the State of Alabama in the promotion of sales and subscriptions and circulation, that would be under the subscription department and not under your department. Is that correct?

Mr. Embry: We object to that.

The Court: I will let it in. I don't see where it has got any value here if there was because there is no proof that there was but go ahead and answer it if you can.

The Witness: I can't answer that, sir.

By Mr. Sam Rice Baker: (Continuing)

Q. You can't answer whether that would be under your department—

A. Oh, I am sorry. I thought you specifically stated the subscription department.

Q. No, I say if there were activities in Alabama in connection with the promotion of sales and subscriptions, that would not be under your department, would it?

A. That is correct, sir.

Q. All right. That's all.

[fol. 429] Redirect examination.

By Mr. T. Eric Embry:

Q. Mr. Waters, you were asked about a mail man or a baggage man. Now, with reference to a baggage man, I believe the substance of your testimony was that on the occasion The New York Times Company had sent claim forms to people or wholesale or retail dealers to whom they had sold newspapers or where the dealer wanted to make a claim because the papers had arrived incomplete, that is, the whole paper wasn't complete or because all of the paper wasn't in the issue, or that it had been damaged or that it had been—or that it had arrived late, and on those occasions the baggage man or the carrier who delivered those papers to the dealer had signed some sort of post card which verified to you the fact that there had been a late arrival or an incomplete delivery or a damaged delivery. Now, do you have any recollection with reference to whether or not there has ever been an occasion in Alabama where that happened?

A. No, sir.

Q. Do you mean by that answer that it has not happened in Alabama according to your recollection?

A. According to my recollection it has not happened in Alabama.

Q. What is an incomplete? We have been talking about it in reference to it—in reference to these exhibits. What is an incomplete?

A. An incomplete copy is a Sunday copy of the paper with a section or two missing. That could be lost from New York in route from New York to its destination.

Q. Now, what is a late arrival?

A. A late arrival—a dealer may be anticipating his copies coming in at a certain time on each specific day. There is a possibility that this late arrival—that this dealer rather will not get his papers as expected and they probably come in about six to twelve hours late and it thereby affects the sale of that particular issue.

Q. Now, we were talking about wholesale dealers. What is a galley?

A. A galley account is an account that is sent in to us [fol. 430] direct to New York by the wholesaler requesting us to put on our books a certain dealer for so many copies. That account is charged through the wholesaler.

Q. Well, assume as a hypothesis and we will take the Lurie News Agency of Dothan, Alabama whom I believe you testified is a wholesaler—

A. That's correct.

Q. If you have a galley account on your books for the Lurie News Agency for Enterprise, Hartford and Ozark, Alabama, what does that mean?

A. That means that we make up that bundle in New York and ship it out of New York and pay all of the transportation and then charge it through the wholesaler.

Q. You mean you look to the wholesaler to pay you?

A. Naturally, the wholesaler does pay us in New York and he collects from the dealer.

Q. Am I accurate and correct in summarizing what you have just said in stating that on those occasions or when that takes places that you are shipping to several different people and charging to one person or a firm—is that right?

A. That's correct.

Q. And that you are carrying that on such as Exhibit 277—if I can tell whose account that is—

A. The Carter News Agency in Mobile, Alabama.

Q. The Carter News Agency?

A. Yes, sir.

Q. I believe you have some galley accounts or you have a galley account with him and they are shipped directly

to the galley account and billed to Carter. Is that correct?

A. That's correct.

Q. At Fairhope, Foley, Thomasville—

A. That's right.

Q. We have established, I believe, that you would be shipping in that instance to five different locations and billing the Carter News Agency. Is that correct?

A. That's right.

[fol. 431] Q. Now, in the event of an incomplete paper or a damaged paper that went to one of the several galley accounts and that galley account returned one copy of a particular issue for that and other galley accounts we will assume returned a copy of another particular issue for some other reason, all of those would be credited, would they not—I will ask you to tell His Honor whether or not this is correct—they would be credited to the account of the Carter News Agency on the books, wouldn't they?

A. That's correct. That's the only account we would have on our books so far as the charges are concerned.

Q. So that when Mr. Baker asked you questions with reference to odd lots, the inference being from his question that he would sell some and return others, when all he was doing—I will ask you to state whether I am correct or not—all he was doing was describing what I have just asked you about, the return of galleys charged to the wholesaler.

Mr. Baker: We object to the leading and his conclusion.

The Court: I will let it in and you may examine him about it later.

The Witness: These returns indicate in coming from the Florence News—I'm sorry. From the Carter News in Mobile—there is no way of our telling where—what account they come from.

By Mr. T. Eric Embry: (Continuing)

Q. Well, let me clarify that. I will ask you to clarify it. You mean there is no way of your telling which of his galley accounts they may or may not have come from?

A. That's correct, sir.

Q. Of the Carter News Agency.
A. That's correct.
Q. All right, sir. That's all.

Recross examination.

By Mr. Sam Rice Baker:

Q. Mr. Waters, do you require your dealers such as the [fol. 432] Carter News Agency to physically return newspapers?

Mr. Embry: We object to what he may or may not require. There is no evidence as to his right to require anything.
The Court: Well, get it down to a particular time.

By Mr. Sam Rice Baker: (Continuing)

Q. In granting the refunds as shown in the statement of Carter's News Agency in Mobile and the two from Montgomery marked and identified as Exhibits 277, 279 and 280, did you require those dealers to return the newspapers on which you gave them a refund credit?

Mr. Embry: We object to the word require—
The Court: I will let it in and give you an exception.
Mr. Embry: We except.
The Witness: Well, we did not require.

By Mr. Sam Rice Baker: (Continuing)

Q. Then, I will ask you what procedure was used by you and by those dealers in establishing the validity of those claims for refund?
A. In many instances we know ourselves right in New York—
Q. I am talking about those claims for refund now that you have just testified about being Exhibits No. 277, 279 and 280. I want you to state what procedure was used by The New York Times and those dealers establishing the validity of those claims for refund.
A. None at all.

Q. Well, then, how did it come about that credit was given?

A. Credit was given because we in New York just know exactly what time our trucks would arrive at a certain depot and whether we missed the regular train for it or not and when we have places as far away as Alabama we automatically recognize their claim for credit without question because there are so many transfers involved in route.

Q. Well, then, how do you determine whether a refund is a late arrival or is an incomplete newspaper?

Mr. Embry: You are talking about these people in Alabama—

The Witness: An incomplete paper is much different [fol. 433] than a late arrival. On a late arrival in most cases the wholesaler will notify us and tell us that he is short certain sections of the Sunday issues and we duplicate those sections in anticipation of the reader still being interested and send that section with them even late in the week. That is an incomplete.

Q. That still doesn't answer my question.

A. They notify us of late arrivals.

Q. Who do you mean by they?

A. Whoever is the recipient of the paper, the dealer or the wholesaler.

Q. Do they notify you of any incomplete paper?

A. Yes, sir.

Q. All right. Now, do you in each case make a claim against the carrier where you have to pay a refund claim to your customers?

A. No, sir.

Q. You don't ever do that, do you?

A. No, sir.

Q. You absorb the loss yourselves.

A. Yes, sir.

Q. Mr. Waters, you testified that your national circulation was six hundred fifty thousand daily and one million three hundred thousand Sundays in 1960.

A. That's correct, sir.

Q. What percentage of those papers are sold in the State of New York?

A. What percentage?
Q. Yes, sir.

Mr. Embry: We object to that question, Your Honor. We are not concerned with New York as opposed to Alabama.

The Court: Well, I will overrule the objection and give you an exception. Just roughly.

Mr. Baker: You may answer.

The Witness: About five hundred thousand daily and about eight hundred thousand Sundays.

Mr. Baker: No further questions.

[fol. 434] JOHN MCCABE, having been duly sworn, was called as a witness for the Defendant and testified as follows:

Direct examination.

By Mr. Roderick M. MacLeod, Jr.:

Q. State your name to the Court.
A. John McCabe.
Q. Where do you live, Mr. McCabe?
A. I live at Oak Ridge, New Jersey. That's two separate words.
Q. Are you employed by The New York Times Company?
A. Yes, sir.
Q. What is your position with The New York Times Company?
A. Administrative Assistant to the Comptroller.
Q. How long have you been employed by The New York Times Company?
A. Since 1949.
Q. Since 1949 have you been continuously employed in matters concerned with the fiscal management of The New York Times Company?
A. Except for my first seven months of employment. From 1950 to the present, I have.
Q. In the course of your duties are you concerned and

connected with the fiscal management and affairs of The New York Times Company?

A. Yes, sir.

Q. Are the records of the financial affairs of The New York Times Company generally under your supervision and control?

A. Yes, sir.

Q. Mr. McCabe, I will ask you first, please, sir, where the principal office of The New York Times Company is located?

A. It is located at 229 West 43rd Street in New York City, New York.

Q. What is the correct name of the company, please?

A. The New York Times Company, A Corporation.

[fol. 435] Q. Is its principal place of publishing activities at that address in New York?

A. Yes, sir.

Q. Principally, the activities of printing the newspaper are carried on there at that address?

A. Yes, sir.

Q. Are any of the activities of the printing of the newspaper published by the New York Times Company, a corporation, carried on in the State of Alabama?

A. No, sir.

Q. Does the New York Times Company have any facilities or office facilities in the State of Alabama for the purpose of printing a newspaper or any material—

A. No, sir.

Q. Does The New York Times Company have any office of any description located in the State of Alabama?

A. No, sir.

Q. Does The New York Times Company maintain any office space in the State of Alabama?

A. No, sir.

Q. Does it have any employees who are residents of the State of Alabama?

A. No, sir.

Mr. Nachman: Just a moment, please. We object to that. We object to the use of the word employees. It has legal connotations. Mr. Faber testified in detail about the relationship of the stringers for The New York Times and—

The Court: I will let it in and give you an exception. Just give it a common sense interpretation.

The Witness: No, sir.

By Mr. Roderick M. MacLeod, Jr.: (Continuing)

Q. I will ask you if there is anybody who is on the regular payroll of The New York Times Company who is a resident of the State of Alabama?

A. No, sir.

[fol. 436] Q. Is there anybody on the regular payroll of The New York Times Company who has an office in the State of Alabama?

A. No, sir.

Q. Mr. Nachman has asked various questions about the stringers. Are they carried on the regular payroll of The New York Times Company?

A. No, sir.

Q. Does The New York Times Company have a regular payroll for its regular employees?

A. Yes, sir.

Q. How often are they paid?

A. Most of our employees are paid weekly. Some of the people are paid monthly but most of the people are paid weekly.

Q. Are there any deductions made from the pay of the regular employees?

A. Yes, sir.

Q. What are those deductions?

A. The Federal Income Tax, New York State Income Tax, Social Security, New York State Disability, Associated Hospitals, Group Life Insurance and Union dues. I think that's about all.

The Court: Does the worker have very much left to carry home?

The Witness: Not very much, Your Honor. I missed one other payment also. The pension plan payment also.

By Mr. Roderick M. MacLeod, Jr.: (Continuing)

Q. Now, are any of those items deducted from the money or compensation that is sent to the stringers?

A. No, sir.

Q. Does The New York Times Company maintain compensation insurance for its employees?

A. Yes, sir. We do.

Q. Is that paid for by The New York Times Company?

A. Yes, sir.

Q. Are the stringers included in the compensation insurance?

A. No, sir.

[fol. 437] Q. I will ask you, Mr. McCabe, to tell the Judge how the stringers are actually paid if you will go through the procedure from the time a request for payment or a notice for payment is sent in to Mr. Faber? He testified that he had to authorize the payment. Would you tell us now how they are paid?

A. Well, first of all, the auditing department would check the number of lines of each stringer in a particular month and that would be sent down to Mr. Faber for his authorization and approval and returned to the auditing department for payment.

Q. Is that paid by check?

A. It is paid by check. Yes, sir.

Q. Is that a check that is prepared in the New York office of The New York Times?

A. Yes, sir.

Q. Is it mailed directly to the stringers?

A. Yes, sir. It is mailed directly to the stringer.

Q. How often is a payment made to a stringer?

A. Once a month if he has written any stories during the previous month.

Q. And if he has not written a story or The Times hasn't bought a story from him during the previous month, would any of the stringers in Alabama get any payment?

A. No, sir.

Q. Mr. McCabe, I will ask you if you are familiar with the payments made to the stringers in the State of Alabama during the year 1960?

A. Yes, sir.

Q. I believe you testified that those three stringers that The Times bought stories from in 1960 would be Don McKee located here in Montgomery, John Chadwick who is lo-

cated in Birmingham and Maurice Castel who is located in Mobile.

A. I don't believe we bought anything from Mr. Castle in 1960.

Q. Do you know if The New York Times bought anything from John Chadwick in 1960?

A. Yes, sir.

[fol. 438] Q. Do you know how much they paid him for that?

A. I think it was $155 or in that neighborhood.

Q. That's your best recollection on that.

A. Yes, sir.

Q. Do you know if the New York Times bought anything from Don McKee in 1960?

A. Yes, sir.

Q. Do you know how much they paid to Don McKee in 1960? Do you know how much The New York Times paid Don McKee in 1960?

A. Again, I believe it was $90.

Q. Ninety dollars?

A. Yes, sir.

Q. You say they did not buy anything from Maurice Castle in 1960.

A. Not to my recollection, no.

Q. All right. It is your testimony that they paid John Chadwick approximately $155.

A. Yes, sir.

Q. And they paid Don McKee approximately $90.

A. Yes, sir.

Q. That would be a total, would it not, of $245?

A. Yes, sir.

Q. Do you know how that payment, that total of $245 paid to the stringers in Alabama in 1960, compares with the total New York Times payment to stringers throughout the country?

Mr. Baker: We object to that, if the Court please. We don't see what the payment of stringers throughout the country has got to do with the payment of stringers in Alabama.

Mr. MacLeod: Your Honor, they contend that The New

York Times Company conducted a substantial part of its business in the State of Alabama. This would be relevant on the inquiry as to whether or not there is a substantial contact in this State or whether it is almost just negligible. The cases say, Your Honor, and I can show Your Honor a case right here—

The Court: I will let it in and give you an exception.

[fol. 439] Mr. Baker: We except, if the Court please.

By Mr. Roderick M. MacLeod, Jr.: (Continuing)

Q. Let me ask you this. Do you know the total that has been paid to stringers throughout the country in 1960?

A. From what period of time in 1960?

Q. From January 1st through May of 1960.

A. The payment throughout the whole country would be roughly two hundred forty-five to two hundred forty-six thousand dollars.

Q. Do you know what percentage of that total payment, the payment to the stringers in Alabama has been for the period of January 1st through May, 1960?

A. It would be less than one-tenth of one per cent.

Q. Less than one-tenth of one per cent?

A. Yes, sir.

Q. Mr. McCabe, does The New York Times have any bank account in the State of Alabama?

A. No, sir.

Q. Does it own any property in the State of Alabama?

A. No, sir.

Q. When I use the word property I am referring to either real estate or personal property.

A. No, sir.

Q. Does it rent any property in the State of Alabama?

A. No, sir.

Q. Does it rent any building of any type?

A. No, sir.

Q. Does it rent any personal property of any type in the State?

A. No, sir.

Q. Does it pay any taxes in the State of Alabama?

A. No, sir.

Q. Now, on occasions, Mr. McCade, when advertising matter is placed in The New York Times either by an advertising agency located in the State of Alabama or directly by an advertiser whose place of business is in the [fol. 440] State of Alabama, where is payment for that advertising made?

A. That would be made in New York City or by check from Alabama to New York City.

Q. And it is received by The New York Times Company in New York City?

A. Yes, sir.

Q. Are you familiar with the amount of advertising revenue that the New York Times has received from advertisements that were placed with The New York Times either through an advertising agency located in the State of Alabama or directly from the advertising place of business in the State of Alabama?

A. For what period of time?

Q. During the period of time from January 1st, 1960 through May, 1960.

A. Yes, sir. I am.

Q. What would that be, please, sir?

A. It would be in the neighborhood of seventeen to eighteen thousand dollars.

Q. Are you familiar with the total advertising revenue of The New York Times for the period of January 1st, 1960 through May, 1960?

Mr. Baker: If the Court please, we renew our objection.

The Court: I will let it in and give you an exception.

Mr. Baker: We except, Your Honor.

The Witness: Yes, sir. I am.

By Mr. Roderick M. MacLeod, Jr.: (Continuing)

Q. What would that figure be, please?

A. That figure would be thirty-seven million five hundred thousand dollars.

Q. What percentage of the total advertising revenue for the period of January 1st, 1960 through May, 1960 would be the advertising revenue received from advertisements placed either through an advertising agency located in the

State of Alabama or an advertiser's place of business in the State of Alabama for that same period of time, January 1st, 1960 through May, 1960?

A. Do you mean the total New York Times advertising income?

[fol. 441] Q. That's right.

A. That would be—

Mr. Baker: May we have a separate objection to each one of these questions, if the Court please?

The Court: Yes.

The Witness: It would be forty-six thousandths of one per cent.

The Court: How much?

The Witness: Forty-six thousandths of one per cent, sir.

The Court: Close to one-half of one per cent?

The Witness: No. Much less than that.

The Court: Forty-six thousandths—

The Witness: No, sir. Forty-six thousandths of one per cent.

The Court: I see. Go ahead.

Mr. MacLeod: Forty-six thousandths of one per cent, Your Honor.

The Court: All right. I carried my decimal too far. Go ahead.

By Mr. Roderick M. MacLeod, Jr.: (Continuing)

Q. Mr. McCade, when newspapers are sold by The New York Times to a subscriber in the State of Alabama, where is the subscription price paid to The New York Times?

A. It is paid to our New York City main office.

Q. Are those subscriptions pre-paid?

A. Yes, sir. They are pre-paid.

Q. And the payment is sent to The New York Times office before subscription is started?

A. Yes, sir.

Q. Now, when newspapers are sold to wholesalers or to news stands located in the State of Alabama, where is payment then sent—first, let me ask you this. How are those people billed by The New York Times?

A. Probably monthly in most cases to the address in Ala-

[fol. 442] bama—the payment would be made to New York City.

Q. Is it generally made by mail?

A. Yes, sir. It is sent by mail or check or money order.

Q. And received by The New York Times at its office in New York?

A. Yes, sir.

Q. Are you familiar with the amount of revenue received by The New York Times from its circulation in the State of Alabama for the period of January 1st, 1960 through May, 1960?

A. Yes, sir.

Q. What would that be, please, sir?

A. It would be in the neighborhood of twenty thousand dollars.

Q. Twenty thousand dollars?

A. Yes, sir.

Q. Are you familiar with the amount of revenue received by The New York Times for its total circulation for the period of time from January 1st, 1960 through May, 1960?

A. Yes, sir.

Q. What would that figure be, please, sir?

A. It would be in the neighborhood of eight and one-half million dollars.

Q. What percentage of the total revenue received from circulation by The New York Times for the period from January 1st, 1960 through May, 1960 would be the revenue received from circulation in the State of Alabama during that same period of time?

A. It would be about a quarter of one per cent. About twenty-three hundredths of one per cent.

Q. Twenty-three hundredths of one per cent?

A. Yes, sir.

Q. Mr. McCade, are you familiar with the total revenue received by The New York Times for the period of January 1st, 1960 through May, 1960 from Alabama sources either through circulation or through receipts from advertising placed by agencies located in the State of Alabama or directly by advertisers located in the State?

A. Yes, sir.

[fol. 443] Q. What would that be, please, sir?

A. It would be about $37,200 or $37,300.

Q. Are you familiar with the amount of revenue received by the New York Times from January 1st, 1960 through May of 1960 from its total advertising and circulation receipts?

A. Yes, sir.

Q. What would that figure be, please?

A. About forty-six million dollars.

Q. What percentage of the total revenue for that period of January 1st, 1960 to or through May 1960 would be the revenue received from Alabama sources that we have described during that period?

A. It would be about 81/1000 of one per cent.

Q. Eighty-one thousandths of one per cent?

A. Yes, sir.

Q. Now, Mr. McCade, are you familiar with the corporate structure of The New York Times Sales Incorporated?

A. Yes, sir. I am.

Q. Is it a separate corporation from The New York Times Company?

A. Yes, sir.

Q. Am I correct in stating that The New York Times Company is the organization that actually publishes the New York Times newspaper?

A. Yes, sir.

Q. Is the New York Times Sales Incorporated a corporation that does not publish The New York Times newspaper?

A. Yes, sir.

Q. Does The New York Times Sales Incorporated have an office located in Atlanta, Georgia?

A. The Sales Company does. Yes, sir,

Q. Do you know what the function of The New York Times Sales Incorporated office is located in Atlanta, Georgia? Do you know what that function is?

A. The solicitation of advertising in The New York Times.

Q. Are there three employees located there, Mr. Monger, Mr. Hurley and a young lady employed as secretary?

[fol. 444] A. Yes, sir.

Q. Are they each on the payroll of The New York Times Sales Incorporated?

A. Yes, sir.

Q. Do they receive any pay or compensation from The New York Times Company itself?

A. No, sir.

Q. Where are the offices of The New York Times Sales Incorporated located? By that I mean the place where the headquarters is.

A. We have the office you mentioned in Atlanta.

Q. Where are the financial records kept?

A. The financial records are kept by the office in New York City.

Q. Are they kept there in The New York Times building?

A. Yes, sir.

Q. Does The New York Times Sales Incorporated—is that the correct name? Is the correct name The New York Times Sales Incorporated?

A. So far as I know. Yes, sir.

Q. Does it have a separate bookkeeping system from The New York Times Company?

A. Separate records are kept on The New York Times Sales, yes.

Q. Does it have a separate bank account?

A. Yes, sir.

Q. You say that it is the function of the employees in the office at Atlanta to solicit advertising for The New York Times Company. Is that right?

A. Yes, sir.

Q. Does it receive any payment from The New York Times company for the solicitation of that advertising?

A. Yes, sir.

Q. Is that its source of revenue as payment for that advertising?

A. Yes, sir.

Q. Does it make any payment to The New York Times Company itself?

A. No, sir. It doesn't.

Q. Does The New York Times Sales Incorporated make [fol. 445] any payment to The New York Times Company for clerical work or administrative work?

A. There is a charge that The New York Times Company makes to the Times Sales for some of the bookkeeping services that The New York Times Company renders them in our New York office.

Q. You say that Mr. Hurley and Mr. Monger are paid on the payroll of The New York Times Sales Incorporated?

A. Yes, sir.

Q. They are not on the payroll of The New York Times Company itself.

A. No, sir.

Q. Does The New York Times Sales Incorporated have any office other than the one located in Atlanta, Georgia?

A. Yes, sir. The New York Times Sales Incorporated has an office located in Los Angeles and an office located in San Francisco.

Q. Mr. McCade, does The New York Times Company publish what they call a microfilm edition of The New York Times?

A. Yes, sir.

Q. Is that an instance where the New York Times newspaper is put on microfilm and then sold in that form—in microfilm form?

A. Yes, sir.

Q. Are any of those sold in Alabama?

A. I would imagine there are a few down here, yes.

Q. Generally, what is the purpose of that microfilm edition?

A. This is mainly a service to different universities and possibly even to a Court in a particular State. They might want a copy of The New York Times in its microfilm form but it is mainly a public service.

Q. It is bought by schools or libraries mainly?

A. Yes, sir.

The Court: Is that used on a device that blows it up and you can read it?

The Witness: Yes, sir. You have to have a microfilm reader.

The Court: I see. You have to have a special machine in order to use it.

The Witness: Yes, sir.

[fol. 446] By Mr. Roderick M. MacLeod, Jr.:
(Continuing)

Q. Does The New York Times Company publish what they call an Index?

A. Yes, sir.

Q. Is that an Index of articles that have appeared in The New York Times?

A. Yes, sir.

Q. Is that also sold chiefly to schools and libraries?

A. Yes, sir. That would be a public service also.

Q. There would be no occasion for an individual to have either one of those, would there?

A. I can't imagine any. Possibly some lawyer might have a copy.

Q. Do you know approximately how many of the microfilm editions are sold by The New York Times?

A. Do you mean overall?

Q. Yes, overall.

A. I would just be guessing probably. It is probably in the neighborhood of several thousand. I don't know the precise number.

Q. What would be your best judgment as to the amount sold in Alabama?

A. I would say just a few. Possibly to the University of Alabama and possibly to the University of Auburn.

Q. Maybe five or six at the most?

A. I would say that.

Q. And about the same figure for the Index?

A. That would be my guess. Yes, sir.

Q. Has the New York Times Company for the period from January 1st, 1960 to the end of May, 1960 conducted any activity or sent any person into the State of Alabama for the purpose of promoting the sale of either one of those items?

Mr. Baker: We object to that, if the Court please. He is in the Comptroller's Department. He is testifying about—

Mr. Nachman: We object to that—

The Court: Well, let's have the Court Reporter read

the exact question so that I can get the question exactly.

[fol. 447] The Reporter: Question: "Has the New York Times Company for the period from January 1st, 1960 to the end of May, 1960, conducted any activity or sent any person into the State of Alabama for the purpose of promoting the sale of either one of those items?"

The Court: Well, suppose he knows. Suppose he wasn't in the auditing department but suppose he knows. It looks like he could testify to it.

Mr. Baker: If he knows he can testify.

The Court: You may examine him and find out the sources of his knowledge. I will let him ask him and then you can find out if he really knows much about it. Go ahead.

Mr. MacLeod: You may answer.

Mr. Baker: We except.

The Court: You may answer if you can.

The Witness: No. We have not sent anyone into the State of Alabama.

By Mr. Roderick M. MacLeod, Jr.: (Continuing)

Q. If anyone had been here you would have had the records of the expense involved, wouldn't you?

A. Yes, sir. We get a monthly expense comparison on all of our operations and the Index happens to be one of them and I never saw any traveling expense involved in the microfilm or Index operations.

Q. As a matter of fact, does The Times lose money on those operations?

A. Yes, it does lose money. This is strictly a public service operation.

Q. During the period of time from January 1st, 1960 through May, 1960 has The New York Times sent any person into the State of Alabama to promote the circulation of its regular edition?

A. No, sir.

Mr. Baker: We make the same objection, if the Court please.

The Court: Same ruling.

Mr. Baker: We except.

[fol. 448] Mr. MacLeod: Did you answer?

The Witness: I did. No, sir.

By Mr. Roderick M. MacLeod: (Continuing)

Q. And under the same circumstances, you would have seen the expense accounts if there had been such a person sent—

A. Yes, sir.

Q. In connection with expense accounts, Mr. McCade, I would like to ask you about some of these accounts that have already been placed in evidence by the plaintiff in this case. First, I show you Plaintiff's Exhibit No. 102. I believe this previously has been identified as a copy of a New York Times expense statement. Is that correct, sir?

A. Yes, sir.

Q. Does that reflect on it the expenses that Mr. John Popham had during the period of time covered by that statement?

A. Yes, it does.

Q. Now, I will ask you this question generally in connection with these expense statements. Do these reflect expenses of people who have been on assignment for The New York Times?

A. Yes, sir.

Q. When a person is traveling for The New York Times, I take it that The New York Times pays his traveling expenses. Is that right?

A. Yes, sir.

Q. Is it the practice to put on these expense statements the points to which the person traveled?

A. Yes, sir. It is put on the left hand column there under the column for assignment and the man is asked to list each city that he may stop at during his travels.

Q. And if he is traveling on assignment for The New York Times, does The New York Times pay his expenses to and from the point he is going to on assignment?

A. We pay his expenses for his getting from his home location to the point of his assignment.

[fol. 449] Q. Would you pay the expenses for his stopping over night en route to the place he is assigned?

A. Yes, sir.

Q. And if an expense statement shows an over night stop in a certain town, it would not necessarily mean that that person conducted any activity in the way of news gathering if he were a reporter for The New York Times in that place, would it?

Mr. Nachman: We object to that, Your Honor. This man is from the Comptroller's office and these documents speak for themselves and there is no way in the world that this man—

The Court: I think that objection is good, Mr. MacLeod. I will sustain the objection and give you an exception.

Mr. MacLeod: Your Honor, I will say this to the Court—

The Court: I don't see how this gentleman could know what happened while they were in Atlanta or Huntsville or where ever they were—

Mr. MacLeod: Your Honor, Mr. Nachman used these documents to cross examine a witness with and the point he tried to put across and the inference he was trying to make from the use of these documents on cross examination was that at each place where it showed a man was in a city in the State of Alabama that it was evidence that that man had conducted some news gathering activities in that city. Now, he has opened it up and we are entitled to explain it—

Mr. Nachman: We are not arguing the case yet, Your Honor—

Mr. MacLeod: He used them and we are entitled to go into this phase—he has used them and we are entitled to explain what they are further.

Mr. Nachman: Your Honor, as I recall my cross examination, one account dealt, I think, with Peter Kihss and it showed that he was in Alabama for nine days. I think I am right about that reporter or it may have been another one but it was for a period of time from January 22nd to January 31st and he never left Alabama during that time. Now, I think what this man in the Comptroller's office can say about the news gathering activities that these [fol. 450] expense statements show is extremely limited.

The Court: Let me ask this witness a question. All you

know about the question he asked you about is what comes to you through this expense account? Does this come to your desk in New York somewhere?

The Witness: I can tell from the expense statement in some cases—

The Court: Well, for instance, a fellow in Huntsville—you don't know what he was doing down there, do you? You don't know what kind of work he was doing, do you?

The Witness: Well, in the case of John Popham being on assignment from Chattanooga to some place probably in Mississippi—he might stop off in Birmingham over night just to rest en route if he was driving from Chattanooga to Mississippi.

By Mr. Roderick M. MacLeod, Jr.: (Continuing)

Q. And if he stopped over night, it would show on his expense account, would it not?

A. Yes, sir.

Q. That wouldn't mean that he conducted news gathering activities in Birmingham, would it?

A. No, sir.

Mr. Baker: Now, if the Court please, we renew our objection. The only person that can testify as to what they did in those places and explain those accounts are the people who did the traveling. Now, an auditor sitting up at a desk in New York is certainly not competent to say how a man travels when he wasn't there.

The Court: I am inclined to agree with that. Let me give you an exception.

Mr. MacLeod: Your Honor, may I make a further statement?

The Court: Yes.

Mr. MacLeod: We can show that Mr. McCade is familiar with these expense statements and he can testify what they reflect. Now, if Your Honor—

[fol. 451] The Court: Well, the exhibits themselves will show what they reflect.

Mr. MacLeod: Mr. Faber testified—take Claude Sitton for example. He testified that Claude Sitton was in Ala-

bama on assignment from The New York Times only on certain days in 1959 and 1960. Mr. Nachman took these statements and attempted to discredit Mr. Faber and in an attempt to cross examine him and trying to invoke the inference from these statements that each time the statement showed that Mr. Sitton was in Alabama that he was conducting some news gathering activities at that place. Now, I want to ask the witness about them individually. I am not going to go into the matter wholesale. I am going to ask him what each one of these expense statements reflect.

The Court: Well, doesn't the statement themselves show that so and so went to such and such a place and stayed for a so and so length of time and stayed all night and paid so much hotel bill or something like that?

Mr. MacLeod: Well, they show the places he visited on here and we can show—Mr. Nachman has opened it up, Your Honor. He went into that himself and so he is not in a position to object at this time. We would like to clarify it for the Court's benefit. I think that would help Your Honor if we could do that.

The Court: Well, the Court needs all the enlightenment it can get.

Mr. Baker: Well, you can clarify it in the right manner—

Mr. Nachman: Instead of clarifying it with the witness Harold Faber who sent the men on assignment, they are now trying to clarify it with somebody with the Comptroller's office—

The Court: Well, I don't see how he could be in New York—most of his knowledge is taken from those statements there.

Mr. Beddow: If the Court please, this gentleman knows that Mr. Popham was sent on certain occasions on certain missions and that he was given certain assignments—

The Court: Well, now, I didn't understand him to testify that he knew all that.

[fol. 452] Mr. Beddow: Well, he knows it from his records and if anybody knows it, the man who pays the money out and has to approve it—

The Court: Well, I thought that Mr. Faber was the man who did all of the assigning up there.

Mr. Beddow: He personally knows everywhere Mr. Popham goes or goes in an automobile. He will not fly in an airplane. He won't have anything to do with planes. That's the way he travels, Your Honor—

The Court: It's flirting with the undertaker.

Mr. Beddow: That may be, Your Honor. He also knows, if it please the Court, of his own personal knowledge that this man travels that way and that when he has these assignments then these records reflect that he has traveled that way and that he stopped in Birmingham. It might show that he stopped in Birmingham and—

The Court: Let me ask one question. Let me see one of those.

Mr. MacLeod: This is the particular exhibit, No. 102, Your Honor, that I was going to refer to.

The Court: Now, this is Exhibit No. 102 and here is a statement from John Popham and it says that he departed from Huntsville and arrived—do you know just what his business was in Huntsville or going through there?

Mr. MacLeod: I believe he can tell from that statement, Your Honor.

The Witness: He was on his way from Memphis back to Chattanooga. He arrived at Huntsville, Alabama at midnight. He was driving—

The Court: I know all that but what was he doing down there? Do you know whether he was gathering news or advertising the circulation or what? We are agreed on that—

The Witness: Mr. Popham's home office was in Chattanooga and he was on his way to Memphis back to Chattanooga and he just stayed in Huntsville over night. He arrived in Huntsville at midnight and he left at eight o'clock in the morning.

Mr. MacLeod: Wouldn't that show that his limited time

[fol 453] The Witness: Well, apparently he was just resting in a hotel over night.

Mr. Whitesell: Apparently?

The Witness: Yes.

Mr. Whitesell: You don't know of your own personal

knowledge what he did, do you? That's the specific point, Your Honor.

Mr. Baker: Your Honor—

Mr. Nachman: Here is another one, Your Honor, Plaintiff's Exhibit No. 110 that shows that Wayne Phillips was in Montgomery from March 18th through March 24th—

Mr. Beddow: We are not asking him about that yet—

Mr. Nachman: I will ask Mr. McCade whether he can look at this and tell what he was doing in Montgomery all that time.

Mr. Embry: If the Court please—

Mr. MacLeod: If the Court please, that hasn't got a thing to do with what—

The Court: Well, there are too many lawyers talking at one time. One at a time.

Mr. MacLeod: Your Honor, that hasn't got a thing in the world to do with this particular exhibit that I am questioning this witness about. It doesn't enter into this objection that they have made here.

The Court: I just don't believe he can testify what this man was doing down there. I will give you an exception. Go ahead.

Mr. MacLeod: We except, Your Honor.

By Mr. Roderick M. MacLeod, Jr.: (Continuing)

Q. Would that expense account tell you whether or not he was gathering news in that place or is there an absence of a showing on there as to what he was doing?

Mr. Nachman: We object on the same grounds, if the Court please.

The Court: I think the paper itself would show that.

Mr. Beddow: Well, the only thing is, Your Honor, they [fol. 454] went into great detail in connection with an examination of the witness in connection with these particular exhibits and Mr. MacLeod is attempting to clarify it so that Your Honor will not have the laborious chore ahead of you of going through all that—

The Court: Well, a Judge's life is just full of laborious chores.

Mr. Beddow: Well, they went into it, Your Honor, and we feel we should give an explanation of—

The Court: Well, let me give you an exception on that. I don't believe his sources of knowledge are sufficient to allow him to answer that question.

By Mr. Roderick M. MacLeod, Jr.: (Continuing)

Q. Mr. McCade, in the course of your duties with The New York Times Company have you had occasion to be familiar with the practices in connection with expense statements for correspondents of The New York Times?

A. Yes, sir.

Q. Was there a period of time when it was your duty to approve or disapprove expense statements?

A. There was a period of time when it was my duty to audit these expense statements.

Q. You had to audit them?

A. Yes, sir.

Q. How long a period of time did that cover that you were connected with those duties?

A. For approximately two years.

Q. During the course of that time you became familiar with these expense statements, did you not?

A: Yes, sir.

Q. And you became familiar with the practices of The New York Times and of the correspondents in connection with what expenses were to be paid in connection with the activities of the correspondents while he was on an expense account.

[fol. 455] A. Yes, sir.

Mr. MacLeod: Your Honor, I believe we have shown from that that he is familiar with these things—

The Court: Well, it might be a general practice but as to having him testify as to what that man was doing and as to whether or not he was gathering news—let me stand pat on my ruling. You may have an exception.

Mr. MacLeod: All right, sir. We except.

The Court: Now, if you want to, Mr. MacLeod, you may make the same offer as to each one of these exhibits and let the Court overrule you and you may have an exception to each one.

Mr. MacLeod: They are already in evidence, Your Honor.

The Court: Well, if you want to you may ask a question about each one of them. I thought it might save some time.

Mr. MacLeod: Mr. McCade, I show you here a document identified as Plaintiff's Exhibit No. 102—

Mr. Nachman: Your Honor, if it will save time, we will stipulate that the same question was asked in regard to each one with the same objections and the same ruling of the Court—

The Court: Well, why couldn't we do that instead rather than go through all of them.

Mr. Nachman: We can have the same understanding we had on all the other documents earlier.

Mr. MacLeod: Well, Your Honor, I might want to ask him another question about this document instead of the one they have objected to and I believe I will at this time.

The Court: All right. Go ahead.

By Mr. Roderick M. McLeod, Jr.: (Continuing)

Q. Now, Mr. McCade, this document purports to be an expense statement for John N. Popham, Jr.?

A. Yes, sir.

Q. Now, will you read to the Court this item right here dated March 2nd?

Mr. Nachman: Your Honor, that is exactly the item [fol. 456] Your Honor has just ruled on. It is the trip from Memphis and we just can't see any reason for going over the exact question now. He has asked him to read from the statement and it is the same trip he just asked about that Your Honor just ruled on.

The Court: Well, let him ask the question and see if it is different from the other one.

Mr. MacLeod: Read that answer there, Mr. McCade.

The Witness: It says, "March 2nd, departed Memphis 5:00 P. M., arrived Huntsville, Alabama at midnight." Then it has a series of expenses listed there.

By Mr. Roderick M. MacLeod, Jr.: (Continuing)

Q. What is the next item there?

A. Do you want me to read the expenses?

Q. No, not the expenses. Begin at March 3rd.

A. It says, "March 3rd, departed Huntsville at 8:00 A. M., arrived at Chattanooga, Tennessee, March 3rd, at 1:00 P. M."

Q. From your experience and your connection with and your familiarity with expense statements of The New York Times and looking at this whole document taken together with that item you have just read, would that indicate to you that John Popham was conducting any news gathering activities in Huntsville, Alabama?

Mr. Baker: We object to that, if the Court please.

The Court: I sustain the objection. It is a question of what that indicates to the Court—let me sustain the objection to that and all that line of questioning.

Mr. MacLeod: We except, Your Honor. I would like to ask the same question—

The Court: Don't you think there is some way to save time? Don't you think you can ask the same question and have the same objection and have the same ruling—

Mr. MacLeod: I am going to do that right now, Your Honor. I would like to ask the same question and I would like the Record to show if we can, Your Honor, that the [fol. 457] question was actually asked in connection with each one and to show an exception to the Court's ruling in connection with each one. I ask the same question in connection with Plaintiff's Exhibit No. 98 which purports to be an expense statement of Claude Sitton. I ask the same question about Plaintiff's Exhibit No. 99 which purports to be an expense statement of John N. Popham. I would like to ask the same question in connection with Plaintiff's Exhibit No. 100 which purports to be an expense statement of John N. Popham. I ask the same question in connection with Plaintiff's Exhibit No. 101 which is an expense statement of John N. Popham. I ask the same question in connection with Plaintiff's Exhibit No. 93 which is an expense statement of Claude Sitton.

By Mr. Roderick M. McLeod, Jr.: (Continuing)

Q. Now, Mr. McCade, I am going to show you an expense statement of Claude Sitton which has been introduced into

evidence by the plaintiff in this case and is marked as Plaintiff's Exhibit No. 96 and ask you if there is any reference on there at all to the State of Alabama.

A. I don't see any Alabama City mentioned here.

Mr. Nachman: We will withdraw this exhibit, Your Honor.

Mr. MacLeod: Well, it is in evidence now.

Mr. Nachman: Do you want to leave it in?

Mr. Whitesell: Do you want to move to exclude it or do you want to leave it in?

Mr. Nachman: It doesn't make any difference to us. It was sent to us an expense statement by The Times as an expense statement pertaining to Alabama and apparently somebody there also mistook Huntsville, Arkansas for Huntsville, Alabama and we did too.

The Court: Where is that? In Texas?

Mr. Nachman: In Arkansas, Your Honor. It is completely immaterial to us but we will be happy to withdraw it in view of the error that both we and The New York Times made.

Mr. MacLeod: Go ahead and withdraw it.

Mr. Nachman: We will withdraw Exhibit No. 96.

Mr. MacLeod: We would like the Record to show, Your [fol. 458] Honor, that if they withdraw it that it was one of the records and documents that they used to cross examine Mr. Faber with.

Mr. Nachman: I don't know whether I used this particular document to cross examine Harold Faber with or not.

The Court: Well, the Record will show.

Mr. Baker: Leave it in.

Mr. Beddow: All right. Let's get contrary now. Leave it in. I thought you wanted to withdraw it because you made an honest mistake—

Mr. Nachman: We did make an honest mistake—

Mr. Beddow: I said that you did and I know that you didn't do it purposely and that it was an honest mistake by that—but why quibble over it. Now, you say to leave it in—

Mr. Nachman: I said that we would do whatever you gentlemen wanted us to do about it—

Mr. Beddow: Well, if he wants to withdraw it—I would want to withdraw it if I made an honest mistake—

The Court: Well, we all make mistakes. Why can't we adjourn at this time until three o'clock?

(At this point Court recessed and reconvened at 3 P.M.)

Direct examination. (Continued)

By Mr. Roderick M. MacLeod, Jr.:

Q. Mr. MacCade, does the New York Times Company buy news information and stories from the Associated Press?

A. Yes, sir. We belong to the Associated Press.

Q. Do you buy news information or news stories from the United Press?

A. Yes, sir.

Q. Do you also buy news information or news stories from other wire services?

A. Occasionally we do, yes.

Q. Do you buy news photographs from one of those wire services?

A. Yes, sir.

[fol. 459] Q. That would be the Associated Press or the United Press.

A. Yes, sir.

Q. Does the Associated Press bill the New York Times?

A. Yes, sir.

Q. Do you know on what basis they bill The New York Times? Is it a periodic billing?

A. I believe it is a weekly billing.

Q. Weekly?

A. Yes, sir.

Q. And The New York Times pays those bills.

A. Yes, sir. We do.

Q. They send the payment to the Associated Press office?

A. Yes, sir.

Q. Do you know where the Associated Press headquarters is located?

A. We send payments to the New York City office of the Associated Press office.

Q. Does the United Press also bill the New York Times?

A. Yes, sir.

Q. Is that on about the same basis?

A. Yes, sir. It would be a smaller payment, of course.

Q. A smaller payment. Do you buy less information news from that source?

A. They supply less.

Q. I see. They supply less. Your payments are made, as between those two, on the basis of how much news they supply. Is that correct?

A. Well, also the circulation of the New York Times would be taken into consideration and the volume of news with the circulation is taken into consideration as a basis.

Q. Does The New York Times exercise any supervision or control over the activities of the Associated Press?

A. No, sir.

Q. Does The New York Times exercise any supervision or control over the activities of the United Press?

A. No, sir.

[fol. 460]

NEW YORK TIMES COMPANY ASSIGNMENT OF ADDITIONAL GROUNDS OF OBJECTIONS

Mr. Embry: Under the stipulation and agreements had throughout the hearing on the Motion to Quash in the L. B. Sullivan case wherein it was agreed that counsel for The New York Times Company could assign any additional grounds of objections to questions propounded to the various witnesses and to the introduction of documentary evidence that they saw fit to do, such stipulation being for the purpose of saving the Court's time on the original hearing, the defendant, The New York Times Company, wishes to and does assign the following additional grounds of objection. To each objection made originally to questions propounded to the witnesses and the introduction of documentary evidence, that the questions called for a mental operation of the witness and not facts and that the questions called for an answer which does not tend to prove or disprove whether Don McKee and John Chadwick were agents of The New York Times Company so that purported

service upon McKee would constitute valid service upon this defendant. It does not tend to prove whether or not The Times did business in Alabama or whether the cause of action attempted to be stated in the complainant's cause accrued from or was incident to the doing of business or performance of work or service in Alabama by The New York Times Company or its agents, servants or employees and that these same grounds of objection apply to the introduction of the various exhibits offered by the Plaintiff. Further grounds of objection to questions propounded to the various witnesses as well as to the introduction of documentary evidence are that the question and the evidence sought to be adduced by an answer thereto and the documents would not be material or legal evidence such as would authorize a construction by the Court of Section 199 (1) of Title (7), Code of Alabama, 1940, that would permit the Court to assert jurisdiction over the person of The New York Times Company, a corporation, and to admit such evidence for such purpose would be such a misapplication of the law as would deprive this defendant of its property without due process of law in contravention or violation of the Fourteenth Amendment of the Constitution of the United States and in contravention or violation of Article 1, Section 6, of the Constitution of Alabama, 1901, [fol. 461] and would deny to this defendant equal protection of the law in contravention or violation of the Fourteenth Amendment of the Constitution of The United States and would constitute an abridgement of freedom of the press in contravention or violation of the First Amendment to the Constitution of the United States, taken together with the Fourteenth Amendment of the Constitution of the United States and would impose an unreasonable burden upon Inter-State Commerce in contravention or violation of Article I, Section 8 of the Constitution of the United States and such questions and the evidence sought to be adduced therefrom and such documents would be illegal and immaterial as a basis for the Court construing or holding that Don McKee was an agent of this defendant upon whom service of process might be had so as to support a holding by the Court that any purported service upon him would subject this defendant to the jurisdiction of this Court

and the admission of such evidence and the holding on the basis of such evidence that he was an agent so as to subject this defendant to the jurisdiction of this Court, would deprive this defendant of its property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States and in violation of Article 1, Section 6 of the Constitution of Alabama, 1901, and would deny to this defendant equal protection of the law in violation of the Fourteenth Amendment of the Constitution of the United States and would abridge freedom of the press in violation of the First Amendment to the Constitution of the United States, taken together with the Fourteenth Amendment of the Constitution of the United States and would impose an unreasonable burden upon Inter-State commerce in violation of Article I, Section 8 of the Constitution of the United States.

[fol. 462] Q. All right, sir. That's all.

Cross examination.

By Mr. M. R. Nachman, Jr.:

Q. I will sort of proceed in reverse order as we were talking about the Associated Press. The Associated Press is a corporation, is it not?

A. I don't know what the legal set-up is. It is made up of various newspapers—

Q. They are considered as members, aren't they?

A. That's right.

Q. The Associated Press is a non-profit organization, is it not?

A. I am not familiar with their fiscal operations.

Q. Does it pay any dividends to its members?

A. Not so far as I know.

Q. You would know, if they did, wouldn't you?

A. Well, The New York Times didn't receive any.

Q. The New York Times has been a member for a good long time, hasn't it?

A. Yes, sir.

Q. Is the same thing true with the United Press?

A. Yes, sir. So far as I know now.

Q. It is also a cooperative—

A. I didn't answer that they were a cooperative.

Q. Well, what is the status of the United Press, if you know?

A. Well, I really don't know.

Q. Well, let's get back to the Associated Press now. Am I correct in stating that a newspaper has to be a member of the Associated Press in order to get or to be able to get news from the Associated Press?

A. Yes, sir.

Q. Is the purpose of being a member the ability to avail yourself of the news gathering services of the Associated Press?

A. Yes, sir.

[fol. 463] Q. Now, earlier in your testimony, sir, you spoke of a regular payroll. Is there any other kind of a payroll that The New York Times maintains?

A. No, sir.

Q. Are the stringers on a payroll of The New York Times?

A. No, sir.

Q. How are they paid? What kind of a set-up is maintained for the stringers?

A. It would be a monthly payment based on any stories they had submitted to The New York Times for the preceding month.

Q. Well, they are paid for things other than stories, aren't they? I don't want to be repetitive but I believe you have been present throughout this hearing and heard the testimony, have you not?

A. Yes, sir.

Q. And do you recall the testimony of Mr. Faber that Mr. Chadwick and Mr. McKee were paid for services rendered to Harrison Salisbury while he was down here?

Mr. MacLeod: Your Honor, we object to him asking questions about what other witnesses testified to and—

Mr. Nachman: All right. I will withdraw that question. I was just trying to shorten things a little bit.

The Court: All right. Proceed. The question is withdrawn.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Am I correct in stating that Mr. Chadwick and Mr. McKee were paid for services rendered to Harrison Salisbury in Alabama during the month of April of this year, 1960?

Mr. MacLeod: Your Honor, I object to that. The testimony—

Mr. Nachman: Your Honor, this is cross examination—

Mr. MacLeod: They paid for information—

Mr. Nachman: Your Honor, I tried not to interrupt Mr. MacLeod in his direct examination.

The Court: Well, if he knows. Go ahead.

[fol. 464] By Mr. M. R. Nachman, Jr.: (Continuing)

Q. I show you a piece of paper identified as Plaintiff's Exhibit No. 2 and I show you a slip of paper which reads, "Chadwick, Birmingham. Allowance, $25 for help given Salisbury on his swing through south. For authorization, see memo 418." Now, does that indicate payment for a story?

A. It indicates payment.

Q. Yes, sir. I understand that but does it indicate payment for a story, and if so tell us what story was submitted?

Mr. Embry: We object to that, Your Honor. The document speaks for itself. It is in evidence.

The Court: I will let it in and give you an exception.

Mr. Embry: We except.

The Witness: The piece of paper mentions that the allowance was for helping—it mentions an allowance of $25 given for helping Harrison Salisbury.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. There is no mention of a story. Is there?

A. It mentions help given to Harrison Salisbury.

Q. There is no mention of a story. Is there?

Mr. Embry: We object to that, Your Honor. He is arguing with the witness.

The Court: If he knows, he can say so.
The Witness: I can only say what the slip of paper—

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. That's right. The slip of paper doesn't mention a story. This was the authorization of which $25 of a $100 payment for John Chadwick in the April, 1960 envelope was made. Isn't that correct, sir?

A. Yes, sir.

Q. Isn't that why this slip of paper was in the envelope?

Mr. Loeb: He said, yes.

[fol. 465] The Witness: I said, yes.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, I show you Plaintiff's Exhibit No. 1 which is an envelope on Don McKee for April, 1960. Now, I show you a piece of paper contained therein and I will read it along with you. "McKee. Montgomery. Allowance, $25 for help given Salisbury on his swing through South. For authorization, see memo 4-18-60." That's what it shows, isn't it?

A. Yes, sir.

Q. This is the same situation throughout—there is nothing on here about payment for a story. Isn't that right?

A. No, sir. That's right.

Q. No, there is not. That's what your answer meant, wasn't it?

A. Yes, sir.

Q. Now, since you are familiar with all of the payments to the stringers, perhaps you can tell us what payment, if any, was sent to Don McKee for sending in this telegram which is in evidence as Plaintiff's Exhibit No. 78?

Mr. MacLeod: If the Court please, I object to that. That wouldn't tend to prove or disprove any of the issues in this case as to whether The New York Times was doing business in the State of Alabama. This is not a legitimate matter of inquiry. This has been shown to have been a matter that was done in the aid of the defense of this law suit after this plaintiff had made a demand on this defendant. It is

immaterial, irrelevant and incompetent and has no bearing whatsoever on the issues set out in this motion to quash or in the complaint and it is a confidential matter and as to what was done or what was paid in connection with it would be a privileged matter between this defendant and his attorney and the inquiry he has made is completely immaterial.

The Court: I will let it in. Go ahead.

Mr. MacLeod: We except, if the Court please.

The Witness: Would you repeat the question?

[fol. 466] By Mr. M. R. Nachman, Jr.: (Continuing)

Q. The question was, what payment, if any, was made to Don McKee for submitting this telegram, Plaintiff's Exhibit No. 78?

A. I don't know of any payment that was made. We submitted canceled checks on all payments made to Mr. McKee and Mr. Chadwick in 1960.

Q. Well, that would include up to what point?

A. I believe that would include up to April 26th, 1960.

Q. Well, for service performed on April 14th, 1960 would not be included in that, would it?

Mr. MacLeod: Your Honor, we object to that. He told what he produced—

Mr. Nachman: I didn't ask him what he produced—

Mr. MacLeod: He has already testified that he didn't know of any payment being made to McKee on this item.

The Court: Well, if he says he doesn't know, then that's all he can say.

Mr. Nachman: Your Honor, I believe he was talking about—

The Court: I believe the question is admissible. I will rule with you.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. You may answer. Was payment made to McKee for this?

A. I answered that I don't know.

Q. Well, is there anyone else connected with The New

York Times who is in charge of the stringers who does know? I thought from your Direct testimony that you were the man.

A. I can just repeat what I said before. Canceled checks for 1960 were submitted.

Q. Yes, sir. I understand that and I am not making any point that no canceled checks for this were submitted but I am simply asking you as Comptroller as you testified about the payment of stringers and I am asking you if any payment was made to McKee for his services in connection with this Exhibit No. 78?

[fol. 467] Mr. MacLeod: Your Honor, he has answered twice already that he doesn't know.

Mr. Nachman: I am now trying to find out—

The Court: Well, one more time and we may save time. Go ahead. If he doesn't know that's all he can say. If he doesn't know, he doesn't know.

Mr. Nachman: You don't know?

The Witness: I repeat again, I don't know.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, as I recall your Direct testimony and correct me if I state it incorrectly, your testimony about the payment to stringers I thought covered January 1 through May, 1960.

A. That's right. I made a mistake before. I said April 26th and I think we sent canceled checks through May, 1960. If you will look through your canceled checks you will—

Q. Well, we don't have any envelopes beyond April, 1960. That is, these envelopes and by these envelopes I mean envelopes such as Plaintiff's Exhibits No. 1 and No. 2 and the like.

A. The payments made in May would cover stories submitted in April. The payment is always a month behind, you see.

Q. Well, we have no payment for May. Are there some that you have with you?

A. No.

Mr. Embry: Excuse me for interrupting, Your Honor. There seems to be some confusion here. He testified that the envelopes show a period for which the stories were sold and this witness is talking about when the check is written. In other words, if he got any check in May it would show on the envelope in April. I think that's what he is trying to say.

Mr. Nachman: Is that what you are trying to say?

The Witness: The check dated May, 1960 would cover the envelope dated in April.

[fol. 468] By Mr. M. R. Nachman, Jr.: (Continuing)

Q. I see. So that any May envelope would take us over into June. Is that right? Is that the way it works?

A. That's right. If any stories were submitted in May they would be paid for in June.

Q. Well, I understand that. Assuming that there were some they would be paid for then.

A. That's right.

Q. Now, you mentioned a lot of deductions that you take off the payroll. Are they taken off for all of the employees of The New York Times?

A. Well, I mentioned the pension payment but some of the people are not eligible because of their age.

Q. Well, all of those deductions you mentioned are not made for all of the employees of The New York Times, are they?

A. Some of them are.

Q. Some of them are but not all of them.

A. About half a dozen are made for all of the employees of The New York, The New York Times rather.

Q. But all of them aren't made for all of the employees of The New York Times. Isn't that correct?

A. Yes, sir. I agreed with that.

The Court: Am I to understand that an employee would be somebody who was on the payroll?

Mr. Nachman: I don't know, Your Honor. I am asking him about—

The Court: Well, how about a stringer? Do you take out anything for a stringer and I think the word stringer is

a horrible name. Do you take out any Social Security and things like that?

The Witness: No, Your Honor, we do not.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, you mentioned the number of stringers. Does that include just stringers in the United States or does The New York Times have stringers outside of the United [fol. 469] States?

A. I don't believe I mentioned the number. I believe I mentioned the amount of payments.

Q. The amount of payments. You are correct. I stand corrected.

The Court: Don't you think we could stay within the borders of the continent of the United States?

Mr. Nachman: Well, I was just wondering, Your Honor, whether the payments included payments to stringers outside of the continental United States as well as within the United States. I don't know whether they have any—

Mr. Loeb: The question he answered this morning, as I recall it, was very clear. It was limited to the continental United States.

Mr. Nachman: Well, if so, he can limit it again.

The Witness: Yes, that's right. Domestic payments to stringers.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, The New York Times does urge people and by people I include corporations or municipal or State organizations as well, to buy its Index, does it not?

A. No, we don't.

Q. You never send out any circulars regarding the Times Index?

A. We may occasionally advertise through an ad in the newspaper that we have this service available.

Q. I will ask you whether you have ever seen this document before or one like it?

A. It is a promotional piece for our Index.

Q. It is designed to promote the sale of the Index, isn't it?

A. Yes, I would assume so.

Q. Now, I notice on this brochure which has been identified as Plaintiff's Exhibit No. 310 for identification, the statement "Your Index is a Research and Reference Tool Almost Unsurpassed—"

Mr. MacLeod: We object to that. Let him answer the [fol. 470] question—

Mr. Nachman: I plan to read from it—

Mr. MacLeod: Are you going to introduce it into evidence?

The Court: Well, if he doesn't offer it, then you can offer it.

Mr. MacLeod: We except.

Mr. Nachman: Now, I will start again with the quotation, "Your Index is a research and reference tool—"

Mr. Embry: Your Honor, we object to his reading this into the Record without having offered it into evidence.

Mr. Nachman: Well, I will offer the document into evidence then.

The Court: Go ahead and offer it. It might save time.

Mr. Nachman: We offer it into evidence as Exhibit 310.

Mr. MacLeod: We object to its introduction on the grounds that it hasn't been shown to have any materiality or any pertinency to this case. It hasn't been shown to have any bearing on the question of whether or not The New York Times conducted any business in the State of Alabama or whether there has been any activity of The New York Times in the State of Alabama and all that is insofar as has already been shown is a piece of paper about The New York Times Index and hasn't been shown that it has any connection whatsoever with The State of Alabama.

Mr. Nachman: Your Honor, I was trying to connect it up when—

The Court: If you don't connect it up, it will go out. You can't get it in all at one time. Go ahead.

Mr. Nachman: The reason I was calling attention to this quotation was—the quotation I was about to read before they interrupted me has a line under it "William Stanley Hoole, Librarian, University of Alabama."

Mr. MacLeod: Your Honor, we move to exclude Mr.

Nachman's remark. He is attempting without being able to prove that is valid evidence to put it before the Court by stating himself what it is.

[fol. 471] The Court: Well, if it is proved that that is mailed and sent into the State or something, then it would be admissible—what did it say about Stanley Hoole? What did he do?

Mr. Nachman: Well, I was going to read it because I didn't want to characterize what he had done. This statement with quotes around it appears above his name. "Your Index—"

Mr. MacLeod: Just a minute! I am going to object to his reading it.

The Court: I will let it in and give you an exception to it word for word. Go ahead.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. It reads as follows: "Your Index is a research and reference tool almost unsurpassed in our organization. Not only do we use it as an Index to The Times but as an index to other contemporary newspapers, here and abroad." Now, isn't material like this or material similar to this sent into Alabama and other States and does a promotion for the Times Index?

A. I don't know.

Q. Do you know how this quotation was obtained from Mr. Hoole?

A. I assume that the Librarian of the University of Alabama agreed to—

Mr. MacLeod: Now, just a minute. We object to that, Your Honor. He tried to get it identified and he couldn't and he hasn't introduced it into evidence—

The Court: Well, he couldn't go on what the witness would assume. We have to get it stronger than that. It has to be stronger than that if it is to get in at all.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Does The Times, before it publishes quotations such as this one, obtain authorization from them for the use of their names?

Mr. MacLeod: Your Honor, we object to that unless it is shown whether or not it was done in this particular case and whether or not it was done in Alabama—

[fol. 472] The Court: Yes.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Do you know whether or not such authorization is obtained by The Times?

A. I don't know.

Q. Do you know whether any payment is made? Do you know as Comptroller whether any payment is made to such persons for endorsement of The New York Times Index?

A. I have never seen any.

Q. But you do say that this is promotional material which you recognize as such.

A. Yes.

Q. And you do know that it is sent out by The New York Times.

Mr. MacLeod: I believe he testified, Your Honor, that he didn't know.

Mr. Nachman: Well, do you know whether it is sent out by The New York Times?

The Witness: It would be sent out upon request.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. It is sent out upon request. It is only sent out upon request. Is that your testimony?

A. Well, I don't know. There may be exceptions.

Mr. Nachman: Could we leave it with this identification, Your Honor—

The Court: Oh, yes. Leave it as offered in evidence and turned down.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. I show you now some documents which were sent in connection with the Motion to Produce and I show you some cards.

Mr. Nachman: Your Honor, may I inquire before getting an identifying witness whether the fact that they sent a [fol. 473] similar brochure in response to the Motion to Produce would make it admissible without further identification because we have one here, I think, which came along with the material sent by The Times out of this box previously identified. Your Honor will recall that we asked for such material in our motion.

Mr. MacLeod: Your Honor, it is not made admissible because it has been produced here by this defendant. It is up to him to show its admissibility.

Mr. Nachman: Well, I didn't know whether Your Honor's ruling was based on absence of identification—

The Court: No. I just don't think it is admissible unless you can show by somebody that they sent it in here.

Mr. Nachman: All right, Your Honor. I will not go into that then without such testimony.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, do you recognize these cards, and if you do, I will have them identified before I ask you any more questions about them.

A. I don't recognize them.

Q. Do you know whether or not these are cards kept by The New York Times as a part of their records to indicate buyers or subscribers, or however you refer to them, of The New York Times Index?

Mr. MacLeod: Your Honor, he has already testified that he doesn't recognize them.

The Witness: I don't recognize them. There is no identification on them.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Do you see the word "Index" here?

A. It doesn't mention The New York Times.

Q. The accounts for The New York Times Index doesn't come under your department at all. Is that correct?

A. Well, the account—

Mr. MacLeod: We object—

[fol. 474] Mr. Nachman: Your Honor, he testified about The New York Times Index on his Direct Examination and how it was handled and how many subscribers they thought there were in Alabama and now he says he doesn't know anything about these cards.

Mr. MacLeod: Your Honor, I don't think Mr. Nachman has made clear to the witness just what cards or just what accounts he is talking about.

Mr. Nachman: I am talking about the accounts in connection with The New York Times Index and specifically the sale of the New York Times Index to persons or organizations in Alabama. As I recall, there was some testimony on Direct Examination about the number of organizations in Alabama who took this New York Times Index and now I am showing him cards that were produced in response to the Motion to Produce.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, as I understand it, you don't know what these are and you can tell nothing from looking at them. Is that your testimony?

A. I don't recognize these cards.

Q. By looking at them then, you have no idea whether they have anything to do with The New York Times Index or not. Is that correct? Do you mind taking a look at them?

A. Yes, sir. I will look at them again.

Mr. MacLeod: Your Honor, we object. The witness has testified he doesn't recognize them—

Mr. Nachman: Do you mind if he looks at them, Mr. MacLeod?

Mr. MacLeod: No—

The Court: Let him take one more look. Of course, if he doesn't recognize them, that's that.

Mr. MacLeod: It is not shown that they are fiscal records of The New York Times. Those may be some other mailing department records and they are not shown to be—

Mr. Baker: If it please the Court, we move that his testimony on Direct Examination with reference to The

[fol. 475] New York Times Index be stricken as based on lack of knowledge.

Mr. MacLeod: Your Honor, the only thing he said he didn't know about was these particular cards and it is not shown that they are connected with his department in any way—

The Court: Well, if we strike his testimony about the Index, then it doesn't look like this would be relevant at all, would it?

Mr. MacLeod: Sir?

The Court: If he moves to strike all of his testimony about the Index—if we do that, then this wouldn't be relevant, would it?

Mr. MacLeod: Let me ask him a question—

Mr. Nachman: No, sir. I am going to finish my cross examination. I let Mr. Embry interrupt me from time to time but I want to finish my cross examination without further interruption.

Mr. MacLeod: Well, I think I can clear up the difficulty.

The Court: Well, now, let's make all objections from the counsel table to the Court now.

Mr. MacLeod: Your Honor, I want to ask this witness a couple of questions on Voir Dire and see if I can find out—

The Court: Well, he doesn't seem to know much about these things but if you can find out it is all right.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, these cards contain headings of dates, debit and credit, don't they?

A. Yes.

Q. They have the name of an institution, for example, "Alabama Polytechnic Institute, Main Library, Serials Section, Auburn, Alabama." Is that on one of them?

Mr. MacLeod: Your Honor, I object. Once more, Mr. Nachman is trying to read the evidence he wants in without having the document identified—

The Court: It is cross examination. I will let it in and [fol. 476] give you an exception.

Mr. MacLeod: We except, Your Honor.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, Mr. McCade, am I correct in stating that you know nothing about these records regarding the New York Times Index? Is that correct? You have never seen them before; you don't know what they are; you don't know where they came from. Is that correct, sir?

A. I answered that I don't know.

Q. Have you ever seen cards like these before?

A. I have seen similar type cards. These are just alphabetical cards.

Q. Have you ever seen cards like these that were microfilmed?

A. No, sir.

Q. You know nothing about these.

A. No.

The Court: He said he doesn't know.

Mr. Nachman: Well, Your Honor, we asked in our Motion to Produce that records be produced in this Court evidencing the sale of the microfilm edition of The Times in Alabama and evidencing the sale of The New York Times Index in Alabama. These cards were produced in response to that motion. Now, we have a witness on the Stand from the Comptroller's Department who testified on Direct Examination about the number of subscribers who were buyers in Alabama of these two items and when I cross examine him on the basis of the cards which the Times sent in here in response to such a Motion, he says he doesn't know anything about them and so we renew our Motion to have testimony stricken regarding the New York Times Index and the New York Times microfilm edition—

The Court: I will take that Motion under consideration.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, let's talk about The New York Times Sales Incorporated. Who owns the stock in that organization?

A. The New York Times.

[fol. 477] Q. It owns all of it?

A. Yes, sir.

Q. Who are the officers of that company?

A. Do you want me to list them all?

Q. Well, tell me whether they are people who have any connection with The New York Times Company?

Mr. Embry: Officers of what company now?

Mr. Nachman: The Sales. I am using that shorthand rendition just to save a little time.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Are the officers in Sales people who are connected with The Times publishing—the newspaper company?

A. Yes.

Q. What position do they hold in The New York Times Company, a newspaper company?

Mr. Embry: Your Honor, I object now. We object to that unless he specifies which officers he is talking about.

Mr. Nachman: The officers of the Sales Company. What position do they hold—

The Court: Well, President, Vice-President, Secretary and Treasurer and so on down the line.

Mr. Nachman: Yes, Your Honor. That's it. What position does the President of Sales hold in the newspaper company?

The Witness: The President of the Sales Company is the Vice-President of The New York Times Company.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. How about the Vice-President of the Sales Company?

A. It should be the Associate Business Manager of The New York Times.

Q. How about the Secretary of the Sales Company?

A. He is also the Secretary of The New York Times Company.

Q. How about the Treasurer of the Sales Company?

A. He is the Comptroller of The New York Times.

[fol. 478] Q. Are there any other officers of the Sales Company?

A. I believe there is an Assistant Treasurer.

Q. What position does he hold with the newspaper company?

A. He is an Executive in the Circulation Department.

Q. Now, who are the Directors of the Sales Company?

A. Do you want me to list their names?

Q. Again, are they officers or employees of the newspaper company?

A. Yes, sir.

Q. They are?

A. Yes, sir.

Q. All of them?

A. Yes, sir.

Q. Where are the books of the Sales Company kept?

A. In New York City.

Q. Are they kept in the offices of the newspaper company?

A. Yes, sir.

Q. Who does the accounting work on the books? Is it the employees of the newspaper company?

A. Yes, sir.

Q. Now, you mentioned some sort of payment from the newspaper company to the Sales Company. How is that payment computed? On what basis is it made?

A. On the number of hours. That is a constant figure and about a year or so ago when the Sales Company began in Atlanta we worked up the number of hours spent by The New York Times Company employees in working up the activities and in working up the accounts of The New York Times Sales and based on that computation we worked up a service charge.

Q. So, what The Times newspaper company is really doing is paying the employees of The Sales Company for their time. Isn't that correct, sir?

Mr. Embry: Objection! That's a question of law for the Court, if the Court please, and invades the province of the Court.

Mr. MacLeod: It is argumentative—

The Court: The question was, did The New York Times Company pay the officers of The New York Sales Company? [fol. 479] Mr. MacLeod: No, sir.

Mr. Nachman: Your Honor, they spoke of—if I understood Mr. McCade correctly he said that certain payments were made by the newspaper company to The Sales Com-

pany. Is that incorrect, Mr. McCade? If it is, please correct me, sir.

The Witness: I didn't say payment was made. I said a service charge.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Well, by payment I mean the transfer of money.

A. Well, the transfer of money would be from The Times Sales to the New York Times and not to any employee.

Q. Do you mean that The Times Sales transfers money to The New York Times newspaper company?

A. Well, we are talking about the service charge.

Q. Well, then, maybe you had better explain what you mean by the service charge then. Perhaps I misunderstood you.

A. I will go over it again. About a year ago, we worked up the number of hours spent by New York Times' employees in working up the accounts and doing the bookkeeping for The Times Sales and we equated those hours into a monetary service charge.

Q. Well, that's what I was saying. My next question is that the service charge is based on the activity of the Sales Company's employees, isn't it? How much time they spend—

Mr. MacLeod: I think you are confused about that.

The Witness: The Times Sales has no employees in New York City.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Well, then, the Sales Company pays the Times' employees. Is that what the service charge—

A. No, sir. I said The New York Times Sales Company pays The New York Times service charge based on the amount of time spent by The New York Times' employees in doing bookkeeping for The New York Times Sales.

[fol. 480] Q. All right. Now, what revenues does The New York Times Sales Incorporated have? What are their sources of revenue?

A. That source of revenue is based on the amount of advertising that they sell to The New York Times. Their

revenue is ten per cent of the revenue they obtain for soliciting advertising for The New York Times.

Q. Who pays them the ten per cent?

A. The New York Times.

Q. Well, that's what I said. Then, The New York Times does make payments to The New York Times Sales Incorporated, doesn't it?

A. I don't think that was the question you asked. You were talking about employees.

Q. Well, I asked you about payments but at any rate the New York Times newspaper pays The New York Times Sales ten per cent of the advertising that The New York Times Sales solicits for The New York Times newspaper. Is that correct?

A. For the advertising record. That's right.

Q. Is that correct?

A. Yes, sir.

Q. Does The New York Times Sales Incorporated ever pay any dividends?

A. No, sir. Not as yet.

Q. It is a new thing, isn't it?

A. July 1st, 1959 is when the Atlanta office was opened.

Q. July 1st, 1959. Was that when the company got under way or had it been under way for some time before that?

A. No, the company itself was incorporated in, I believe, April of 1956.

Q. And it has never paid a dividend.

A. No, sir.

Q. Does it have any surplus at all?

A. Yes, sir.

Q. Do you know how much that is?

Mr. Embry: We object to going into the surplus of—

The Court: I sustain the objection.

[fol. 481] By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Now, I believe that when a solicitor such as Mr. Monger or Mr. Hurley submits an expense statement, it is submitted on The New York Times newspaper company forms, is it not?

A. Yes, sir.

Q. It is not submitted on the Sales Company forms.

A. No, sir.

Q. Those expense accounts are approved by an employee of The New York Times newspaper. Is that correct?

A. Yes, sir.

Q. And only by such employee. Is that correct?

A. Yes, sir.

Q. No employee of The New York Times Sales can approve an expense account of an employee of the Times Sales. Is that correct, sir?

A. An officer of The New York Times Sales would authorize the payment.

Q. I thought you said that the only people who could authorize it was an employee of The New York Times newspaper—

Mr. MacLeod: We object, Your Honor—

Mr. Embry: We object, if the Court please—

The Court: You are both objecting at the same time now and—

Mr. Nachman: Are you making a distinction between the word "authorized" and the word "Approved." Is that it?

The Witness: I will, yes.

Mr. Nachman: Were you?

The Witness: Yes.

The Court: Well, let me get this straight. If an officer or executive of The New York Times Sales Company—if he approves such and such a payment—before the man finally gets it, it would come through the New York Times office, wouldn't it?

The Witness: Yes, sir.

Mr. Nachman: The newspaper office—

The Witness: Maybe I should have—could I explain this a bit?

[fol. 482] The Court: Go ahead.

The Witness: Mr. Wagner is Mr. Hurley's superior. He would approve Mr. Hurley's expense statement and the Treasurer of The New York Times Sales would authorize payment of that expense statement.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. And Mr. Wagner is the Advertising Manager of The New York Times newspaper, is he not?

A. Yes, sir.

Q. He is the Mr. Wagner you are talking about.

A. Yes, sir.

Q. And he is the man in charge of Mr. Hurley? Is that correct?

A. Yes, sir.

Q. And also in charge of Mr. Monger.

A. Yes, sir.

Q. Now, Mr. McCade, do you personally examine the expense statements of all of the expense payments for The New York Times' employees that come to your office?

A. No. It would be impossible.

Q. Am I correct, sir, in stating that you rely upon the approval of their department heads and you pay on the basis of such approval?

A. That would be after the auditing department had checked the figures thereon.

Q. Yes, sir.

A. Yes, sir.

Q. Assuming that's correct and assuming that they are approved as to their nature so to speak by the department head of the particular employee, then, you pay on the basis of those checks—

A. Yes, sir.

Q. Are you an officer of the New York Times Sales?

A. No, sir.

Q. Am I correct in stating that you testified that The New York Times had never sent any persons or employees of its company to Alabama for the purpose of promoting the sale and circulation of its newspaper?

[fol. 483] Mr. MacLeod: Your Honor, we object to that. Mr. Nachman's question goes beyond the scope of direct examination and Mr. Nachman has not specified any particular time. He said, never. That would be too far removed—whatever the word never means, to be pertinent or material as to the question of whether or not The New York Times was doing business in the State of Alabama

about April of 1960 when service was attempted to be had on it.

Mr. Nachman: I only asked him if he had testified to that.

The Court: I think the question is too broad and I sustain the objection to it and give you an exception.

By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Is it your testimony, Mr. McCade, that The New York Times during the year 1960 has not sent any employee into the State of Alabama to promote the sale and circulation of its newspaper?

A. Yes, sir.

Q. That is correct. Is that your answer?

A. Yes, sir.

Q. That it has not. Now, on what basis—

A. You are talking about circulation now, aren't you?

Q. I am talking about circulation, I am talking about the Index and I am talking about the microfilm edition and I am talking about anything outside of the advertising business.

A. Are you including the news department?

Q. All departments except advertising.

A. Well, I believe—

Q. Not news gathering. Not the reporters. I exclude that as well.

Mr. MacLeod: Your Honor, we object to that. That embodies a request for five different answers—

The Court: Well, could you track them down one by one then?

[fol. 484] By Mr. M. R. Nachman, Jr.: (Continuing)

Q. Well, excluding news reporters, excluding advertising solicitors, has The New York Times sent any of its personnel into the State of Alabama in the year 1960 to promote any of its business activities?

A. To my knowledge, no.

Q. Are those statements based on your examination of

the records of The New York Times—the expense statements?

A. Yes, to the best of my recollection.

Q. Is there any other basis for your testimony?

A. What other basis would there be? I don't know whether I quite follow you or not.

Q. I don't know. You are the one that gave the answer.

A. Well, the only basis that I would have would be the records of The New York Times.

Q. What records of The New York Times would those be?

A. The expenses of the various departments concerned.

Q. You have just testified a few minutes ago that it would be impossible for one person to examine all of those expense statements, haven't you?

A. I wasn't talking about expense statements then. I was talking about expenses. When you say monthly expense you are talking about the expenses of all the departments of The New York Times and that would be a summary of any expenses involved.

Q. All right. That's all. No further questions.

DEFENDANT RESTS

Mr. Embry: We rest, if the Court please.